Supreme Court, U.S.
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No. _____

In The
Supreme Court of the United States

OCTOBER TERM, 1993

FRANK BORING FITZGERALD,
Petitioner,

v.

MONTANA DEPARTMENT OF FAMILY SERVICES, et al,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Frank Boring Fitzgerald
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QUESTIONS PRESENTED

1. Whether Petitioner could rely upon a Department of Family Services "Report", and other evidence in support, with which he could: establish a foundation for what his Civil Rights were, thereby his standing; establish violations to his Civil Rights; establish violation of federal laws and the US Constitution in regards his Rights and privileges relative to events reported?

2. Whether Petitioner could rely on tolling of a state tort statute of limitations pending discovery, where discovery was concealed by State secrecy and circumstances, where there had been unsuccessful efforts at discovery, observing federal law or state law to toll?

3. Whether Petitioner could rely upon an exception, contained in state's tort statute of limitations, that of torts founded upon instruments in writing having a longer limitation period?

4. Whether in a series of Civil Rights injury inflictions, federal courts may characterize certain inflictions for accrual purposes negating other later inflictions which could best met the objective threshold test?

5. Whether DFS discriminated applying a "Service Treatment Agreement" to foster care alleged perpetrator instead of to Petitioner.

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OCTOBER TERM, 1993

FRANK BORING FITZGERALD,
Petitioner,

v.

MONTANA DEPARTMENT OF FAMILY SERVICES; ANNABETH FELSMAN; SHIRLEY TIERNAN; PAT CAHIL; RUSS FRANCETICH; WARREN WRIGHT, DFS Regional Administrator; DAMON L. GANNETT, Guardian Ad Litem; CASEY FAMILY PROGRAM, Division of the Casey Foundation; VINCENT MATULE; MIMI MORGAN; PEGGY SMITH O'LEARY; GEORGE BULATOWICZ; KENNETH CURTIS, in his capacity as foster care father,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
To The United States Court Of Appeals
For The Ninth Circuit

Frank Boring Fitzgerald, Petitioner, Pro Se, respectfully petitions that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Ninith Circuit entered on August 30, 1993 and made final on October 28, 1993 by the denial of a petition for rehearing.

OPINION BELOW

The August 30, 1993 MEMORANDUM (C.A.9 92-35001) of the Court of Appeals is to be found in App. "A", p1-4.

The November 15, 1991 FINAL JUDGMENT (CV 90-69-BLG-JDS) of the US District Court is to be found in App. "B", p5-7.

The October 28, 1993 ORDER (C.A.9 92-35001) denying a petition for rehearing is to be found at App. "C", p8.

The November 9, 1993 Judgment and Mandate (C.A.9 92-35001, CV 90-69-BLG-JDS) is be be found at App. "D", p9.

Other matters Petitioner will reference in his Arguments are also to be found in the Appendices bound in a separate volume.

JURISDICTION

The judgment of the United States Court of Appeals for the Ninth Circuit was entered on November 9, 1993. A petition for rehearing was denied on October 28, 1993. The jurisdiction of this Court is invoked under 28 USC Sec. 1254(1).

QUESTIONS PRESENTED

1. Whether Petitioner could rely upon a Department of Family Services "Report", and other evidence in support, with which he could: establish a foundation for what his Civil Rights were, thereby his standing; establish violations to his Civil Rights; establish violation of federal laws and the US Constitution in regards his Rights and privileges relative to events reported?

2. Whether Petitioner could rely on tolling of a state tort statute of limitations pending discovery, where discovery was concealed by State secrecy and circumstances, where there had been

unsuccessful efforts at discovery, observing federal law or state law to toll?

3. Whether Petitioner could rely upon an exception, contained in state's tort statute of limitations, that of torts founded upon instruments in writing having a longer limitation period?

4. Whether in a series of Civil Rights injury inflictions, federal courts may characterize certain inflictions for accrual purposes negating other later inflictions which could best met the objective threshold test?

5. Whether DFS discriminated applying a "Service Treatment Agreement" to foster care alleged perpetrator instead of to Petitioner.

THE CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED[1]

US Constitution, 8th, 9th, 11th, and 14th Amendments

MCA 27-2-101, et seq., state statutes of limitations

USC 42-601, et seq., intent of Congress as to foster care

USC 42-1983, Civil Rights

STATEMENT OF THE CASE

On April 6, 1990, Petitioner herein, relying on USC 42-1983, filed his Civil Rights Complaint in US District Court in Billings, Montana, containing his stated claims against listed defendants therein. The case was assigned No. CV-90-69-BLG.

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1 Pertinent parts are printed in App. "E", p10-15, except those cited verbatum in the Argument.

Petitioner claimed defendants violated his Civil Rights under color of state law which some privileges in similarity are recognized in USC 42-601, et seq as intent of Congress in regards foster care practices and procedures, allegedly not followed; and which some Rights are secured by the US Constitution, allegedly were violated.

Furthermore, the Complaint went to failure of defendants to timely afford Petitioner, in 1987-90, his constitutionally assured Right of procedural and substantive due process in state court before his Civil Rights could be interferred with.

This case went to several defenses on part of defendants therein. Outstanding ones were based upon when did accural begin, when to begin to run a state statute of limitations, and failure then of Petitioner herein to state a claim for which relief could be granted.

In support of defendant's position Petitioner could not state a claim upon which relief could be granted, defendants referred to decisions of state courts dealing with Petitioner and his child, said by defendants to have severed Petitioner's Parental Rights and that his child was said to be in permanent State custody.

Later in the case, US district court adopted the concept of completely severed Parental Rights and permanent State custody attributing these to state district court "Order" of September 1986 which "Order" was said to have been the point, or before, of accrual, and a beginning to run of the 3 year state tort statute of limitations.

During those CV-90-69 proceedings before the bench, sitting without a jury, Petitioner introduced into the record several exhibits, as evidence to establish a foundation for what his Civil Rights were, thereby his standing; to establish violations of his Civil Rights; to establish violation of federal laws and the US Constitution; and to

establish accural, discovery, and timely starting to run of a state tort statute of limitations. Those exhibits were admitted to support his Civil Rights claims against defendants but played no part in this case as regards its outcome.

Of particular interest to presentation of Petitioner's position was the admittance of the Department of Family Services (DFS) "Report" of December 1987-March 1988, located in the Record Exhibits of the US district court file as Exhibit "C"[2], therein. Exhibits "B"[3] and "D"[4] therein supported Exhibit "C".

Also of particular interest to timing question was the September 2, 1986 "Order"[5] of the 13th judicial district state court, mentioned above, which among other things granted the State temporary care and temporary custody of Petitioner's daughter and granted him entitlement to regular visitation without terminated his Parental Rights. That "Order" was legally based on the "Stipulation"[6], an instrument in writing. Affirmed *In Re M.G.M.*, 741 P2 770 (1987), app den US Sup Ct docket 87-1582 (1988).

The US court rendered dismissal of the claims against the State and its actors under Fed.R.Civ.P. 12(b)(6) with the remainder given summary judgment under Rules 54(b) and 58. The lateness of filing the Civil Rights Complaint was said to form basis for dismissal.

Petitioner timely appealed to the US Court of Appeals for the Ninth Circuit from the district court's Final Judgment of November 15, 1991 dismissing all of the defendents therein listed. The appeal

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2 Exhibit "C", the DFS "Report", is found here in App."F".
3 Exhibit "B", Phillips "Statement", is found here in App. "G".
4 Exhibit "D", "note" by M.G.M., is found here in App. "H".
5 That "Order" can be found here as App. "I".
6 The "Stipulation" found here as App. "J".

was assigned No. 92-35001.

On appeal, the matter of the DFS "Report" and its supporting evidence were again side-stepped in favor of the September 2, 1986 "Order" of state court said to form the beginning to run of a 3 year state tort statute of limitations.

The Ninth Circuit affirmed the US district court on August 30, 1993 with rehearing denied October 28, 1993.

GENERAL ARGUMENT

> "Focus of 1983 is on misuse of power possessed by virtue of state law and made possible only because wrongdoer is clothed with authority of state law." Johnston v. Lucas, 786 F2 1254 (1986, CA5 Miss)
>
> "{Civil Rights} Statute's primary purpose is preservation of human liberty and human rights." Davey v. Tomlinson, 627 FS 1458 (1986 ED Mich) {ins add}

In this Civil Rights case, harmful events of the first foster care, App. p39, 40, 41, and wrongful conditioning (followed by "grooming", App. p17, 25) of the second, which heavily contributed to final physical custody arrangements as to Petitioner's child in the September 1986 "Order", were absolutely concealed from Petitioner who was prevented from making the connections until discovery of the first foster care harm a year later in the Phillips Notarized "Statement".

Harmful events of the second foster care were discovered in the official DFS "Report" after system secrecy was lifted because of **Fitzgerald v. State of Montana, et al**, DV-88-727{726} (1988). Fitzgerald therein is Petitioner herein. In *Fitzgerald*, State district court refused to mandate a removal of Petitioner's daughter from harm in the second foster care.

This Civil Rights violation case is evidence based: 2 instruments in writing, one of which was generated by the State; a state court order; and a set of evidentiary documents, one of which was generated by the State. The State-generated instrument and document contains evidence of elements of tortious conduct on part of defendants setting the stage for Petitioner's claim of violation of his Civil Rights.

But the DFS "Report", the Phillips Notarized "Statement" and the M.G.M. "note" were ignored, by federal courts below. Only the state court "Order" played any part in this federal Civil Rights case and it was misread which is proved in Arguments below.

Argument as to Question 1.

Whether Petitioner could rely upon a Department of Family Services "Report", and other evidence in support, with which he could: establish a foundation for what his Civil Rights were, thereby his standing; establish violations to his Civil Rights; establish violation of federal laws and the US Constitution in regards his Rights and privileges relative to events reported?

A.

By its "Order" of September 2, 1986, App. p49 at par. 3 and 5, respecting and legally enforcing agreements in the "Stipulation", App. p51, as the will of the court, it created the Right of regular visitation and also created the corresponding duty of implementation which was wrongfully violated by knowledgeable defendants; a tortious inaction:

"To give rise to an action in 'tort' the right violated must have been created and corresponding duty must have been imposed by law." "Donovan v. Kansas City, 175 SW2 874, 882 (1943). Also see Stimson v. Michigan Bell Tel. Co., 258 NW2 227, 231

(1977); Johnson v. Johnson, La.App., 171 S2 710, 712 (1965); Parsons v. Foshee, 55 SE2 386, 388 (1949)."

Petitioner argues he was not terminated of: his Parental Rights, App. p49 par. 3; his Right to know, App. p16, 20, 34; his Right to be present when his child underwent surgery, a separate court order; by that separate order, his Right to know private matters relative to that surgery; his parent-child relationship, related to Parental Rights; his being entitled to regular visitation, App. p49 par. 5; his familial association; his Right to have his child protected while in temporary (see App. p49 par. 4) State custody.

B.

Essential elements of proof of Rights, certain, retained in Petitioner, beyond proof of Rights granted by and not terminated by the September 1986 "Order" (see App. p49 at par. 3, 4, 5), was contained in the DFS "Report (see App. p16, 20, 22, 23, 27, 34).

Petitioner was not terminated of his Rights and was not seeking in his Civil Rights Complaint physical custody of his child as injunctive relief although that was a possibility at that moment. (In 65 days she would have been 18.)

For relief based upon Complaint's claims, he was seeking vindication of his Civil Rights, deterrance, and compensatory damages for violations of those Rights. If only some Civil Rights are infringed by due process that leaves all of the remander intact, which were extra-due-process infringed. Due process is not an inconsequential constitutional Right.

The DFS "Report", confirming in part his stated claims, alludes to an incident, and, the way State actors handled it in the aftermath. Also, those case historical developments had a tragic impact upon Petitioner's parent-child relationship and familial association, App.

28. The incident and the aftermath, reported in the DFS "Report", were torts of extreme and outrageous conduct. The incident, and the way it was handled, were "crimes against humanity", pooh-poohed by prosecutors, the Governor, and state court. It, and the aftermath that followed in 1987-88-89-90 violated his Civil Rights, tortiously interferred with court ordered regular visitation and thereby familial association.

> "Gist of 'tort of extreme and outrageous conduct' is intentional infliction of emotional distress on another by conduct so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in civilized community; it is conduct so extreme as to exceed any reasonable limit of social tolerance." Hester v. Barnett, Mo.App., 723 SW2 544, 560 (1987).

That 1986 court "Order" legalized a contractual agreement amongst the parties as a temporary settlement of the then State case based upon the "Stipulation".

Casey and the Guardian Ad Litem by court "Order", App. p49, par. 5 were to arrange for regular visitation which was interferred with. Petitioner's child was to remain placed in presumably a loving caring foster care home which it turns out was not; not then nor later. A second State foster care bad faith choice. Petitioner, by means of the "Stipulation" and the court "Order", had an agreement with the parties. Any violation of that agreement was intentional (intent can be derived from conduct), the foster care "Service Treatment Agreement" (foster care "STA") App. p35-36, was an improper means (conduct) to an end, and amounted to tortious interference with contracted (agreed upon in the "Stipulation") relations and resulted in forever damages:

> "Elements of claim for 'tortious interference with contracted relations' or business expectancy are: existence of valid contractual relationship or business expectancy; that defendant(s) had knowledge of that relationship; intentional interference inducing or causing breach or termination of relationship or expectancy; that defendants interferred for improper purposes or used improper means and resultant damages." Commodore v. University Mechanical Contractors, Inc., 839 P2 314, 322 (1992). (ins add)

Petitioner will not be able to pass on to his child his life's works nor to his grandchildren as a direct result of foster care harmful conditioning (brain-washing) of his child.

In that "Report", DFS staff logged their concerns, among other things, as to whether or not to inform Petitioner of that incident. There was discussion among DFS staff and the Guardian Ad Litem and with DFS Attorneys on the subject of Petitioner's Rights. His Parental Rights and Right to know were agreed to have remained intact, although Casey disagreed, App. p26, 27. Certain of defendants were fully aware of Petitioner's Rights yet filed responses and motions and US district court and court of appeals accepted their plea as if Petitioner's Rights did not exist.

C.

It is no longer necessary to discover intended, or even unintended, state action in ostensibly private harmful foster care conduct in order to prosecute such outrageous private and governmental conduct, and intent may be inferred from conduct, as violative of Petitioner's Civil Rights. [Meaning derived from *Brown v. Board of Education* (1954) and other Civil Rights cases which followed on the subject of due process and equal protection of the law directed in the 14th Amendment not solely to the states,

reversing *Slaughterhouse* (1873). *Encyclopedia of the American Constitution,* Vol. 1 1986, p273-280, *"Civil Rights".*] The two are intimately tied together, in this case, **under blanket of the September 2, 1986 "Order" and the "Stipulation" the "Order" was founded upon**.

D.

In early 1988, Petitioner was formally and officially notified by DFS staff both verbally, App. p28, and in writing of the sexual assault (a crime in Montana) incident to have happened to his child while in foster care. (This was logged into the DFS "Report" and is a very important document not to be discarded lightly. Because US district court lacked concern for and consideration of that "Report", it amounting to suppression of the "Report", Petitioner was unable to properly prosecute the case.) His child, on February 17, 1988, wrote to him (and his wife, her godmother as well as stepmother), saying it was none of his business, it was all their fault, and in effect, get lost. Then she wrote as a 7 year old instead of as a 15 year old going on 16. Foster care abuse and neglect was the generating factor for the child's reaction to her real family.

So tragic was the incident and its aftermath of foster care, the second foster care abuse and neglect to happen, it completely destroyed his parent-child relationship the September 1986 "Order" of the court could not possibly have done. Petitioner's Rights were effectively terminated absent procedural and substantive due process.

No greater insult and injury to pride and family has ever happened to Petitioner than for <u>two</u> harmful foster care case historical developments to succeed in destroying his family, the first

one of which he did not know of as it happened, nor to have affected our hearts and minds in a way unlikely ever to be undone.

E.

Petitioner argues, the DFS "Report" confirmed the criminal incident, and confirmed the DFS engaged in an illegal foster care "Service Treatment Agreement", hereinafter foster care "STA", App. p35-36 instead of criminal prosecution. In 1987-88, the DFS had duty to protect Petitioner's child from abuse in the Curtis foster care home. The DFS "Report" refers to attempts at protection and refers to interferrence to that protection. App. p17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 34, 35, 36.

Under intent of Congress in USC 42-671(9)[1988], it was the duty and responsibility of DFS then to bring foster care abuse and neglect to the attention of the 13th state district court who had jurisdiction, as the appropriate court until the child turned 18, App. p48-49. That was not done. Jurisdiction, both as to its "Order" and the "Stipulation" the "Order" was legally based upon, and, over the parties to that "Stipulation". {Section 671(9) was amended in 1990, USC sup II to 1988 edition. Since Novmeber 1990, the DFS only is required to report to itself or to an official higher up in DFS. See DFS "Report" for just such an inhouse written report in 1988, App. p33-34. This was in lieu of required directly reporting to the court.} After a reasonable time of State failure to bring the incident to the attention of the court, or to prosecute Petitioner filed *Fitzgerald v. State, supra* in state district court. {He felt it was a father's duty to protect his child, failing this due to color of state law in state court relying on state statutes, he later felt it was proper to file a Civil Rights action in federal court under 1983.}

State had the duty under the 14th Amendment to obey the 8th and 9th Amendments as regards cruel and unusual punishment of the child in a setting of Rights of the child. [Goes to matter of harm while in involuntary confinement.]

The State also had duty under state statutes to provide protection to children in families where parents are alleged to be abusive and neglectful without distinction as to real families or foster care families.

F.

Petitioner argues, what damage sustained to his child's Civil Rights in the Curtis foster care also happened to his Civil Rights. Throughout history, it has been well established if the child suffers, its parents, possessed of their humanity, as we, also suffer. That is why there is a 1983. Meaning derived from quote from *Davey v. Tomlinson, supra.*

G.

On the question of extraneous matter referenced by the US district court to arrive at its decisions, the court erred in reading into that September 1986 "Order" as fact that which were conspicous misreadings, especially in light of other conclusive evidence noted in the DFS "report" and its supports.

H.

A reading of that "Order", **and the DFS "Report"**, clearly points to errors and is argued here, comparing the quotes of the court with actual readings of the documents will show the errors:

a) US district court said in its order, "...any possible cause of action in this case accrued before September 1986 when the (state) district court made the final determination of (M.G.M.'s) proper custody arrangement. **It was at this point in the pro-**

ceedings that defendant Gannett had completed his representations to the (state) district court with regard to M.G.M." Memorandum Opinion and "Order", January 10, 1991, (item #49 on the docketing sheet) at p4-5. Ins and emp add

Error. The DFS "Report" has copies of correspondence to Gannett as well as log entries of phone calls to him as "Guardian Ad Litem", App. p20, 21, 23, 26, 28, 30, 34. From a reading of the DFS "Report", Gannett clearly was in the picture as late as December 1987-March 1988. In addition, the 13th judicial state district court had state jurisdiction until the child reached 18, App. p48-49, hence, Gannett had not completed his representations to the state district court with issuance of the September 2, 1986 "Order" of that court.

b) US district court went on to say at p5,

"...it was at this time that plaintiff's parental relation with his daughter was completely severed." emp add

Error. From a reading of the September 2, 1986 "Order" of state district court, at "CONCLUSIONS OF LAW", it is clear Petitioner's parental relation with his daughter was not completely severed as stated by US district court. Here is what the state district court "Order" actually said, see App. p49:

"3. Rather than proceeding to trial on the Petition to Terminate the Respondent's parental rights, the parties entered into a written "Stipulation" to provide for (M.G.M.'s) custody..."

"4. It is in (M.G.M.'s) best interests that she be placed in the temporary care, custody, and control of the Montana Department of Social and Rehabilitation Services..." {Now called Department of Family Services, DFS.}

"5. Frank Fitzgerald (Petitioner) shall be entitled to regular visitation with (M.G.M.), and plans for these visitations shall be arranged through the guardian ad litem, the Casey Family Program..." ins and emp add

c). US district court said, at p3:

"...**The book, entitled 'Adversarial Proceedings', is clear evidence that plaintiff (Petitioner) was aware of any purported injury inflicted upon him by defendant Gannett long before April of 1987. Therefore, this cause of action accurued well before the statute of limitations cutoff on April 6, 1987.**" ins and emp add

Error. Not all injuries inflicted upon Petitioner by defendant Gannett, or any of the other defendants for that matter, were adequately made known to Petitioner at the time of infliction only much later. And in fact, certain inflictions, actually did not take place until over a year after the September 1986 "Order". Such as the failure to implement court ordered regular visitation. Such as the foster care sexual assault, App. p18, 19, 25, 28, 30, 31, 32, 33, and foster care "STA", App. p35-36, reported in the DFS "Report".

Argument as to Question 2

Whether Petitioner could rely on tolling of a state tort statute of limitations pending discovery, where discovery was concealed by State secrecy and circumstances, where there had been unsuccessful efforts at discovery, observing federal law or state law to toll?

A.

In the matter of a period of limitations in which to bring a Civil Rights action into US district court. Appellate court stated in its Memorandum of August 30, 1993, see App. p3:

"...The district court granted Gannett's motion for summary judgment, ruling that {Petitioner herein} Fitzgerald's claims against Gannett were barred by the statute of limitation. Action under 42 USC 1983 are governed by the state statute of limitations applicable to personal injury tort actions...MCA 27-2-204 set a 3 year statute of limitation for personal injury tort actions. **In Montana, the statute of limitations begins to run on the date of injury regardless of whether the plaintiff knew of the**

cause-of-action or its accrual. MCA 27-2-102(2); Bennett v. Dow Chemical Co., 713 P2 992, 994 (Mont.1986)." ins and emp add

In *Bennett*, the Montana Supreme Court begins with recitation on the general rule of when limitations period begins. However, what the Montana Supreme Court said in the next few paragraphs is of paramount importance and should be considered governing as applied to this case:

"However, the application of the general rule becomes difficult where the injured person is prevented from knowing of his injury by concealment or other circumstances. In such cases, we have recognized certain exceptions which toll the running of the statute until the discovery is discovered. See Monroe v. Harper (1974) 518 P2 788"

".....prevented from knowing.....by concealment or other circumstances." is the key here. The phase, **whether the plaintiff knew of the cause-of-action or its accrual**, used by appellate court, above, was intended in state statute not to involve concealment or other circumstances because the statutes do have a section on concealment, see App. p11 at 27-2-102(3)(a). Petitioner has maintained he was prevented from knowing of the expanse of injuries to his Civil Rights through State secrecy and adherence to it by defendants under color of state law. A demand for production of documents earlier on was denied, twice. The DFS "Report" was released to him by the State's attorney in *Fitzgerald v. State, supra*.

Continuing from *Bennett*:

"In Grey v. Silver Bow County (1967) 425 P2 819, we extended application of this 'discovery rule' in a malpractice action to a situation where the plaintiff was unable to discover his injury until his cast was removed. We tolled the statute until the injury was discovered, thereby delaying the running of the period by 57 days. Also in *Grey*...at 821, we announced the equitable limita-

tion of the discovery rule of giving full scope to the statute of limitations on the one hand and according a reasonable measure of justice to the plaintiff on the other. The federal district court in Billings took this lead from *Grey* and, after considering the equities, applied the discovery doctrine in a products liability action to toll the statute of limitations until the plaintiff discovered that his cataracts may have been caused by the drug MER/29. Hornung v. Richardson Merrill, in [1979] 317 FS 183. Hornung, then, stands for the idea that a statute of limitations can be tolled until the plaintiff discovers the legal causes of his injury if equity so dictates. However, in 1980, the federal district court in Butte specifically refused to require discovery of the legal cause of an injury to initiate the running of a statute of limitations. Much v. Strum, Ruger & Co., Inc., [1980] 502 FS 743, 745. *Hornung* therefor marks the farthest reaches of discovery in Montana."

"As such there is no Montana precedent for utilizing discovery doctrine to toll the statute of limitations beyond discovery of the cause of the injury." emp add

B.

It is settled, because the Civil Rights Act does not contain a statute of limitations, federal courts have relied on state statute of limitations on torts as the governing period of limitation.

When the period of the limitation begins is not up to state statutes as controlling but up to federal law in US district courts, see Briley v. State of California, 564 F2 849, 855 (1977 CA9):

"...while state law controls in determining the applicable limitations period, federal law determines when the limitations period begins to run." with cites[7]

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7 Cox v. Stanton, 529 F2 47, 50 (1975 CA4); Martin v. Merola, 532 F2 191, 195 n7 (1976 CA2); Kaiser v. Cahn, 510 F2 282, 285 (1974 CA2); see Rawlings v. Ray, 312 US 96, 98 (1941); Hilton v. Mumaw, 522 F2 588, 601-02 (1975 CA9); United California Bank v. Salik, 481 F2 1012, 1014 n7 (1973 CA9), Cert den, 414 US 1004 (1973); Moviecolor Ltd. v. Eastman Kodak Co., 288 F2 80, 83-84 (1961 CA2), Cert den, 368 US 821 (1961).

"Thus a borrowed state statute of limitation may be tolled in conformity with federal doctrine where the right [sought to be vindicated] is a creature of federal statutes..." "*Kaiser, Supra* at 287, see Holmberg v. Armbrecht, 327 US 392, 395-98 (1946), *Moviecolor Ltd., Supra* at 82-83." Ins orig.

The right(s) and privileges to be vindicated in US district court are Petitioner's Civil Rights which Civil Rights, by definition are creatures of the US Constitution, federal courts common law, federal Civil Rights Act and USC 42-601 et seq, as to privileges. In addition, his fundamental Human Rights of Parental Rights were not terminated only modified under due process in the September 2, 1986 state district court "Order" by which he was granted entitlement of regular visitation. Not only were these right(s) and privileges to be vindicated in this case but to be shown to have been violated based upon discovery later than the date of the "Order" when he discovered injury.

"The established rule, which we apply in this case (*Briley, Supra*), is that, where plaintiff has been injured by fraud or concealment and remains in ignorance of it without any fault or want of diligence on his part, the statutory period does not begin to run until discovery of the injury." "*Holmberg, Supra* at 397; *Hilton, Supra* at 602; *Kaiser, Supra* at 287; *United California Bank, Supra* at 1014 n7." Ins emp add.

"In light of the prevailing federal doctrine as to fraud and concealment, we feel that the broad remedial policies of the Civil Rights Act are best served by holding that the California limitations period did not commence until Briley discovered the fraud, or could have done so in the exercise of reasonable diligence." Footnote 7 was applied at this point.

"n7 Indeed, it was a concern for the remedial nature of (Section) 1983 and the important constitutional rights it sought to protect that led us originally to adopt the 3 year limitation (from cited California codes)..." With cites. ins add

C.

Since when to apply a state limitation is a federal question,

> "Principles of equitable tolling enunciated throughout federal law." Anixter v. Home-Stake Production Co., 977 F2, 1549, 1551 (1993 CA11). With cites going back to Bailey v. Glover, 88 US 342 (1875).

and, also in *Holmberg, supra*, at 397, the Court listed cases going back to *Bailey* (1875), Petitioner relies on MCA 27-2-102 statutes of limitations, App. p11, to justify his argument, in support of this Petition, appellate court overlooked or misapprehended material points of state law on time limitations contained in MCA.

MCA statutes of limitations should be read as to its object and policy when analyzing its application to this case. Recently, this Court said:

> "Over and over we have stressed that in expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy". With cites. "Statutory construction 'is a holistic endeavor' and, at a minimum, must account for a statute's full test, language as well as punctuation, structure, and subject matter." U.S. Nat. Bank of Oregon v. Independent Ins. Agents of America, Inc., 113 S.Ct. 2173, 2182 (1993).

The phrase in 27-2-102(1)(a), "a claim or cause of action accrues when all elements of the claim or cause exist or have occurred..." should allow consideration of the 1988 DFS "Report", because very important elements of Petitioner's Civil Rights complaint did not exist or had not occurred on or about September 2, 1986, appellate court said, in affirmation of US district court, was the beginning of the period of limitation.

Further, that phrase should allow, in a continuing course of defendants' misconduct, a beginning with the latest incident, or

injury, and that would extend to include the elements referenced in the DFS "Report", Supra.

The phrase in 27-2-102(1)(a), "...the right to maintain an action on the claim or cause is complete..." should allow a person to first become knowledgeable and then pursue a Civil Rights action in US district court when enough elements are together to be potentially prosecutable and sustainable.

> "Under federal law a cause of action accrues when the plaintiff is aware of the wrong and can successfully bring a cause of action." With cites. "Applying this principle, we have held that a cause of action does not accrue at the time plaintiff becomes aware of a wrong if, at that time, the plaintiff's damages are not certain to occur or too speculative to be proven." With cites. Acri v. International Ass'n of Machinists, 781 F2 1393, 1396 (1986 CA9).

That should allow, in this case, knowledge by Petitioner of the full text and meaning of the September 2, 1986 state district court "Order" yet accrual would began with failures to fulfill duties of defendants imposed by that "Order" and the "Stipulation" the "Order" was legally based on and to provable injuries sustained then by Petitioner to his Civil Rights.

It should allow a decision to be made by Petitioner as to if an action could be sustainable and not frivolous for lack of significant key elements, the objective threshold test. Petitioner could not have pursued his Civil Rights Complaint until enough significant key elements were known by him, especially those elements described in the DFS "Report". Matter of equitable tolling doctrine should therefore apply tolling the limitation to at least include discovery of the DFS "Report", if not, then the Phillips "Statement" (1987).

D.

Grey, supra, does allow tolling pending discovery of the cause of injury and so does 27-2-102(3) in a setting of 27-2-102 read in toto.

However, the 9th circuit in very recent Civil Rights cases is tending towards acceptance of state statutes of limitations as totally controlling, regardless of what is said the statutes say, avoiding a review of a federal question of when to start.

> "Washington Supreme Court interpretations of Washington law are binding on Court of Appeals unless Court of Appeals determines such interpretation to be untenable or veiled attempt to avoid review of federal questions." Powell v. Ducharme 998 F2 710, 713 (1993 CA9 Wash). Citing Oxborrow v. Eikenberry, 877 F2 1395, 1399 (1989 CA9), cert den 493 US 942.

And lack of knowledge is part of the larger federal question of when to start, in terms of concealment.

Petitioner finds it necessary to point out, Montana's statutes of limitations are not geared to a complex set of case parameters such as is evidenced by examination of this case and a complete examination of *Bennett* in a setting of *Grey* shows discovery is a factor to contend with in this cause as a result of a lack of knowledge in terms of concealment. Furthermore the 11th Circuit and the 9th differ on the matter of tolling. Compare, *Anixter, supra* with *Powell, supra*.

Nonetheless, a reading of 27-2-102, in toto, with fair emphasis on 27-2-102(3) which gives an alternative to lack of knowledge, results in a similar reading of *Briley, Supra* at 855:

> "...the statutory period does not begin to run until discovery of the injury..."

If we were to read only that part of 27-2-102(2), the 2nd sentence, see App. p11:

> "Lack of knowledge of the claim or cause of action, or its accrual, by the party to whom it has accrued does not postpone the beginning of the period of limitation",

as the only possible beginning of the limitation, which conflicts with full text of paragraph 27-2-102(3) and its subparagraphs, then Montana and California would conflict on specifications of when to begin the period of limitation as under *Briley, Supra.*, and, a conflict with federal law as to equitable tolling. Thus a federal question has arisen in this case as to national standards of application of tolling pending discovery in terms of concealment.

E.

Montana's tort statutes of limitation are subject to federal interpretation of interrelationships based on circumstances of this complex case.

Is it discriminatory to toll pending discovery for one class of tort and not another, especially in terms of concealment? This case was not granted tolling pending discovery with or without terms of concealment; Petitioner has and is saying it is error.

Tolling pending discovery, especially in terms of concealment, should always be allowed in all cases of Civil Rights at least if the undiscovered injury involves a "crime against humanity" as is the case here. This principle would be in conformity to western Hemispheric international common law, published in cases from the Inter-American Court of Human Rights, an arm of the OAS based in San Jose, Costa Rica.

F.

Certain violations to Petitioner's Civil Rights then having taken place prior to 1986 were not "discovered", under concealment, until later in the Phillips "Statement", App. "G", followed 5 months later

(by more discovery masked thru concealment) in the DFS "Report", App. "F", both well within the 3 years statute of limitations.

Petitioner was not aware at the time of their happening, his child was threatened with a loaded gun by the first foster care father so to keep her mouth shut; she witnessed a near murder; suffered anguish, pain, injury, abuse, and neglect while in the first foster care home long before April 6, 1987. Most of these first foster care harmful events were attested to much later in the Phillips "Statement". See App. "G".

G.

Even if discovery, or concealment, is not enough to show when to begin to run a statute of limitations, consider this:

> ".....(the) period.....begins to run on date the cause of action 'accrues' which is date that damage is sustained and not date when causes are set in motion which ultimately produce injury." City of Philadelphia v. Lieberman, 112 F2 424, 428 (1940 CA3), Cert Den 311 US 679. ins add

"It is a rule of general application that a cause of action accrues for limitation purposes only when it could be prosecuted to a successful conclusion." With cites[8]

Argument as to Question 3

Whether Petitioner could rely upon an exception, contained in state's tort statute of limitations, that of torts founded upon instruments in writing having a longer limitation period?

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8 Kucera v. Metropolitan Life Insurance Co., 719 F2 678 (1983 CA3) citing US v. Wurts, 303 US 414, 418; Grayson v. Harris, 279 US 300, 304-05; Baron v. United Artists, 717 F2 105, 108 (1983 CA3); City of Philadelphia v. Lieberman, supra. Baron at p108 referenced Holmberg v. Armbrecht, 327 US 392, 395-97 (1946); which came from 150 F2 829 (1945 CA2).

A.

The application of a state tort statute of limitations to this case in US district court should have included consideration for a tort founded upon an instrument in writing. The September 2, 1986 "Order" of state district court, App. 49, par. 3, relied on the "Stipulation", App. "J", an instrument in writing, as a legal bases for its issuance.

> "....A "Stipulation" is an instrument taken by order of the court. Its terms are determined by the will of the court, and not by that of the parties." "Consequently it is to be interpreted by the intention of the court only as to the nature and intent of its obligation." Lewis v. Orpheus, 15 Fed. Cas. 492, 493. Also see People ex rel. v. Spring Lake Drainage and Levee Dist. 97 NE 1042, 1047; Burke v. Gale, 67 SE2 917, 920 (1951 Va).

Petitioner was entitled to relief when he sustained damage from failure to implement the obligation for court ordered regular visitation:

> "Generally, a party injured by a breach of an obligation imposed by law or agreement is entitled to compensatory relief." In Re Monetary Group, 2 F3 1098, 1104 (1993 CA11).

Obligation for regular visitation was founded on "instrument in writing", the "Stipulation" put in place by will of state court.

> "Subcontractor's cross claim against steel manufacturer to recover damages it might be obligated to pay to contractor on account of failure of manufacturer to comply with terms of order requiring that materials meet federal specifications was one founded upon an 'instrument in writing' within statute limiting commencement of action founded on instrument in writing to 4 years, and was not barred by 2 year statute of limitations for bringing actions not founded on written instruments." Nomellini Const. Co. v. Harris, 77 Cal.Rptr. 361, 365, 272 C.A.2d 352. Also see El Ranco, Inc. v. New York Meat and Provision Co., 493 P2 1318, 1321 (1972 Nev.).

B.

At App. 12, an action sounding in tort founded on an instrument in writing the limit is 8 (eight) years not 3. 8 years would include mid-1985 when the "Stipulation" was written. The phraseology in 27-2-102(2) should allow 27-2-204 to be placed in a setting of 27-2-202 as the September 2, 1986 "Order" was legally based upon a "Stipulation", an "instrument in writing", such as mentioned in 202.

From 27-2-204: ".....commencement of an action.....not founded upon an instrument in writing is within 3 years."

From 27-2-202: ".....commencement of an action.....founded upon an instrument in writing is within 8 years."

Argument as to Question 4.

Whether in a series of Civil Rights injury inflictions, federal courts may characterize certain inflictions for accrual purposes negating other later inflictions which could best met the objective threshold test?

A.

Standards tests to be met were elaborated in Petitioner's briefs filed at appellate level:

1) Contents of DFS "Report" and the September 1986 "Order" clearly established standing of Petitioner. He retained Rights.

2) The discovery of DFS "Report" was timely within 3 year state tort statute of limitations. As was the Phillips "Statement".

3) Following the "Order", at about the time of discovery of the Phillips "Statement", September 1987 and the DFS" Report", March 1988, injury to Petitioner's Rights had then become significant, sufficient, and met the objective threshold test. Petitioner did meet those standards tests and this case should have proceeded to trial.

B.

Civil Rights are one or more Rights created by or recognized by federal law and the US Constitution. To single out any particular one from amongst many and say if a violation of it occurred many years ago that formed accrual for all other Rights offenses occurring everafter, rejects as valid complaint any other Rights being violated at a later time. Clearly, the international community would not tolerate such an outrageous violation of Human Rights!

Petitioner claims the State and its actors committed crimes against humanity after the date of the accrual said to have occurred by US district court and in affirmation by the court of appeals. That negated the federal question of when in a series of inflictions to begin accrual based upon a complete picture of all inflictions not just a single one picked out of all others as a matter of discretion. The essential element of proof for that picking was missing, as shown above. Otherwise, that places a premium on simplistic procedures over substance and forces forgiveness for all violations occurring after initializing accrual.

In order for vindication of Petitioner's Civil Rights to occur, the violations must **all** be given individual attention examining each and every violation of each and every Right, in light of origin of each Right, thruout the period of complaint to decide accrual (taking into account discovery, concealment, equitable tolling, instruments in writing, and other parameters) based upon a proper examination of the state tort statutes of limitation. This places the suit in proper context as to procedural and substantive due process, which was not granted in this case.

C.

Consider this, as recent as May of 1993, the ninth circuit said:

"Montana recognizes,.....(theory) of "continuing nuisance/ **continuing injury is that each new act gives rise to a separate cause of action and the statute of limitations is tolled until the source of the injury is abated."** Montana Pole & Treating Plant v. I.F. Laucks & Co., 993 F2 676, 679 (1993 CA9). ins and emp add

Argument to Question 5.

Whether DFS discriminated applying a "Service Treatment Agreement" to foster care alleged perpetrator instead of to Petitioner.

A.

In the DFS "Report was discovered the foster care **"SERVICE TREATMENT AGREEMENT** of January 29, 1988. The "STA" was an instrument in writing. See App. "F", App. 35-36. It compounded proof of allegations against defendants and was US district court and court of appeals suppressed along with all the rest of the DFS "Report". That "STA" was bad faith. It unconstitutionally excluded Petitioner's due process and equal protection Rights. It formed, in part, the bases for Petitioner's Civil Rights action to establish liability as regards that instrument violating Petitioner's Civil Rights. That was the 2nd written instrument to play a part in this case.

B.

The September 1986 "Order" called for temporary care and custody in the State, legally based upon the "Stipulation", the 1st instrument, and performance was to be carried out in good faith, one could presume. If any other arrangements, such as an STA and termination of regular visitation, were to take place after that 1986

"Order", further due process would have had to be provided to Petitioner (which it was not) because, he was not devoid of his Rights and privileges by that "Order". That foster care "STA" and failure of further due process violated the 14th Amendment the Civil Rights Act was intended to preserve.

C.

The engagement of that foster care "STA" was a wrongful act because a real family STA, it must be noted, was intended by Congress in USC 42-601, et seq. to bring back together a real family. That foster care "STA" was outrageous unconstitutional government conduct where the foster care father having committed a "crime against humanity" upon his charge went unpunished because of that "STA" and other interference. That "STA" denied, under color of state law, a privilege to Petitioner's real family that which was granted instead to a foster care family, App. p13-14, at 675 (1) in conjunction with (5)(A), App. p14. That, defies the 14th Amendment, Section 1:

> ".....No state shall make or enforce any law which shall abridge the **privileges** or immunities of citizens of the United States....." (emp add)

Thus, Petitioner was discriminated against in favor of the foster care perpetrator of abuse and neglect violative of Title VI of the Civil Rights Act of 1964. "Title VI's ban on discrimination in federally assisted programs was tied to the constitutional provision, Congress's TAXING AND SPENDING POWER." *Encyclopedia of the American Constitution*, Vol. 1 1986, at p285.

D.

USC 42-675(6), App. p15, recognized certain privileges of real parents which was denied to Petitioner under color of state law. In

like fashion to above, as count 2 of discrimination, that federal statute recognized as a privilege a foster care review committee examining the status of a given state case being open to the real parents. The state statute, MCA 41-3-1115(1)(f), instead grants the privilege to a foster care provider. These federally created privileges being strictly a federal question, accrual of infraction ought not be strictly a matter of state statute controlling but of federal law controlling, considering discovery played the critical role. Explained further in *Briley v. State of California, supra.* Few if any provisions of USC 42-601, et seq., have been followed by the State and its actors; in Montana and most other states since inception of the Child Welfare Act of 1980. Petitioner intended to bring this matter of discrimination to the attention of the federal courts on a strictly federal question which could not be resolved no other way in Montana. Apparently, it was not enough.

> "Relief that serves to bring end to present violation of federal law is not barred by the 11th Amendment....." Papason v. Allain, 478 US 265 (1986).

CONCLUSION

For all of the above reasons, dismissals and judgments having taken place in this case should be vacated and this case should be remanded as for a new trial to include all defendants dismissed or granted summary judgment.

Respectfully submitted,

Frank Boring Fitzgerald

Frank Boring Fitzgerald, Pro Se

Dated: January 24, 1994

Appendices follow in separate volume

AFFIDAVIT

STATE OF MONTANA)
) ss:
County of Yellowstone)

FRANK BORING FITZGERALD, being first duly sworn, hereby deposes and says:

He has personally prepared and read his PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT;

He certifies, in his judgment it is well founded.

Frank Boring Fitzgerald

Frank Boring Fitzgerald, Pro Se

SUBSCRIBED AND SWORN TO before me by Frank Boring Fitzgerald on this 24th day of January, 1994.

Dana F. Song

Dana F. Song

NOTARY SEAL

Notary Public in State of Montana
Residing in Billings, Montana
My Commission Expires: Oct. 4th 1994

CERTIFICATE OF SERVICE

I, Frank Boring Fitzgerald, Pro Se, hereby certify service of the forgoing PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT was made on January 26, 1994, by placing 3 true and correct copies of same in the United States mail, postage prepaid, and addressed to each of the following Attorneys of record, and persons known to have an interest in this PETITION, at their last known addresses:

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Frank Boring Fitzgerald

Frank Boring Fitzgerald
Petitioner, Pro Se

Supreme Court, U.S.
(2)
93 1344 JAN 26 1994
OFFICE OF THE CLERK

No. _____

In The
Supreme Court of the United States

OCTOBER TERM, 1993

FRANK BORING FITZGERALD,
Petitioner,

v.

MONTANA DEPARTMENT OF FAMILY SERVICES, et al,
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPENDICES TO PETITION FOR A WRIT OF CERTIORARI

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APPENDIX "A"

NOT FOR PUBLICATION FILED AUG 30 1993

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRANK BORING FITZGERALD,	) No. 92-35001
Plaintiff-Appellant,	) D.C. No. CV-90-69-JDS
v.	)
MONTANA DEPARTMENT OF	)
FAMILY SERVICES, et al.,	) MEMORANDUM*
Defendants-Appellees.	)

Appeal from the United States District Court for the District of Montana Jack D. Shanstrom, District Judge, Presiding

Submitted** August 6, 1993 Seattle, Washington

Before: BEEZER and HALL, Circuit Judges, and CONTI, District Judge.***

Frank Boring Fitzgerald appeals pro se from the district court's dismissal and summary judgment order against him in his 42 USC 1983 action. Fitzgerald alleged that various employees of the Montana Department of Family Services and others violated his right to maintain relations with his daughter. The district court dismissed Fitzgerald's claims against the agencies and employees of the state of Montana under Fed. R. Civ. P. 12(b)(6). The district court granted summary judgment in favor of the remaining defendants. We affirm.

I

[M.G.M.] was born in 1972 to [J.M.]. The Montana Department of Social and Rehabilitative Services removed [M.G.M.] from her mother's home at the age of six alleging abuse. The mother's parental rights were terminated in 1980; [M.G.M.] was placed in a foster home.

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* This disposition is not appropriate for publication and may not be cited to or used by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P.34(a); Ninth Circuit Rule 34-4.

*** Honorable Samuel Conti, Senior District Judge for the Northern District of California, sitting by designation.

In 1980, Fitzgerald was confirmed as [M.G.M.'s] biological father. His parental rights were terminated in 1981; in 1982 the Montana Supreme Court reversed and remanded the case to state district court. Following remand, the termination proceedings were halted by stipulation of the parties. The stipulation allowed [M.G.M.] to live with Fitzgerald on a trial basis. A psychologist determined that [M.G.M.] suffered substantial psychological impairment during the six week period she spent with Fitzgerald, and she was returned to foster care. In 1986, the state of Montana acquired permanent custody of [M.G.M.] by court order. The Montana Department of Social and Rehabilitative Services placed [M.G.M.] in the Casey Family Program, a non-profit, private, long-term foster care charity. [M.G.M.] was placed by the Casey Family program with the Kenneth Curtis family; she has been with the Curtises ever since. As of 1992, she was married and attending Montana State University.

Fitzgerald has been litigating his parental rights and obligations in state court since 1981. He filed this civil rights complaint on April 6, 1990. The named defendants in this action fall into three categories: Montana state agencies and state employees in their official capacities (Montana Department of Family Services, Montana Department of Social and Rehabilitation Services, Annabeth Felsman, Shirley Tiernan, Pat Cahill, Russ Francetich, Peggy Smith O'Leary, George Bulatowicz ,and Warren Wright); the guardian ad litem (Damon L.Gannett); and individuals associated with the private foster care organization (Casey Family Program, Kenneth Curtis, Mimi Morgan, and Vincent Matule).

II

We review de novo a dismissal for failure to state a claim under Fed. R. Civ. P. 12(b)(6). Oscar v. University Students Cooperative Ass'n, 965 F2 783, 785 (9th Cir.) (en banc), cert. denied, 113 S. Ct. 655 (1992).

The district court granted the state's motion to dismiss under Fed. R. Civ. P. 12(b)(6). The final judgment, entered on September 19, 1990 as to the state defendants, was proper under Fed. R. Civ. P.54(b) and 58. Fed. R. App. P. 4(a) establishes a thirty day time limit for appeals. Fitzgerald filed his notice of appeal on December 13, 1991. Fitzgerald failed to timely appeal the

district court final judgment dismissing Montana Department of Family Services, Montana Department of Social and Rehabilitation Services, Annabeth Felsman, Shirley Tiernan, Pat Cahill, Russ Francetich, Peggy Smith O'Leary, George Bulatowicz, and Warren Wright. We do not have jurisdiction over the issues on appeal involving these defendants.

The district court granted summary judgment for Damon L. Gannett on January 10, 1991 and for Casey Family Program, Kenneth Curtis, Mimi Morgan, and Vincent Matule on June 3, 1991. These orders became final judgments on November 15, 1991 under Fed. R.Civ. P. 54(b) and 58.[1] Fitzgerald's appeal is timely with respect to these five defendants.

III

We review a grant of summary judgment de novo. Jones v. Union Pacific R.R., 968 F2 937, 940 (9th Cir. 1992). The district court granted Gannett's motion for summary judgment, ruling that Fitzgerald's claims against Gannett were barred by the statute of limitations. Actions under 42 USC 1983 are governed by the state statute of limitations applicable to personal injury tort actions. Usher v. City of Los Angeles, 828 F2 556, 558 (9th Cir. 1987). Mont. Code Ann. 27-2-204 sets a three year statute of limitation for personal injury torts. In Montana, the statute begins to run on the date of injury--regardless of whether the plaintiff knew of the cause-of-action or its accrual. Mont. Code Ann. 27-2-102(2); Bennett v. Dow Chemical Co., 713 P2 992, 994 (Mont. 1986).

The district court held:

> By the most generous recitation of facts contained in either plaintiff's brief or in the complaint, any possible cause of action in this case accrued before September 1986 when the district court made the final determination of [M.G.M.'s] proper custody arrangement. Order, January 10, 1991 at 4-5.

We agree with the district court. In September 1986, the state court proceedings severed Fitzgerald's parental relationship

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[1] Partial final judgment was entered because a few original defendants were either never served or not further prosecuted by Fitzgerald.

with his daughter. Fitzgerald's alleged cause-of-action against Gannett began running at the latest in September 1986. We affirm the district court's grant of summary judgment in favor of Gannett.

IV

The Casey Family Program, Kenneth Curtis, Mimi Morgan, and Vincent Matule moved for summary judgment on the same statute of limitations ground. Fitzgerald failed to respond to these motions; the district court granted the summary judgment motions through default. United States District Court for the District of Montana Local Rule 220-1. Four days after the district court order, Fitzgerald filed a brief opposing the motions for summary judgment. In its final judgment, the district court considered Fitzgerald's response despite its tardiness:

> All claims or grounds for liability against those Defendants granted summary judgment have been fully adjudicated. Importantly, Plaintiff has presented no issues which could withstand dismissal based upon this Court's holding concerning the running of the statute of limitations in the above-entitled action. Order Entering Final Judgment, November 15, 1991 at 2.

We agree that the statute of limitations precludes Fitzgerald's claims as to these defendants. As with Gannett, any injury to Fitzgerald possibly caused by these defendants arose at the latest in September 1986. Since Fitzgerald filed his complaint more than three years after that date, his action against these defendants is time-barred.

V

The decisions of the district court are **AFFIRMED**.

APPENDIX "B" FILED NOV 15 1993
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA, BILLINGS DIVISION

FRANK BORING FITZGERALD, Plaintiff, v. MONTANA DEPARTMENT OF FAMILY SERVICES; Eugene Huntington, DFS Director; Annabeth Felsman, Shirley Tiernan, Pat Cahill, Russ Francetich, John/Jane Does 1 through 10, in their official capacities as DFS employees; Warren Wright, DFS Regional, Administrator; Damon L. Gannett, Guardian Ad Litem; Casey Family Program, Division of the Casey Foundation; Vincent Matule, Pete W. Surdock, Mimi Morgan, John/Jane Does 11 through 20, as agents of the Casey Family Program; John/Jane Does 21 through 30, in their official capacities as the Foster Care Review Committee, 13th Judicial District; Norma Vestre, Peggy O'Leary Smith, George Bulatowicz and John/Jane Does 31 through 40, in their official capacities as employees of the Montana Department of Social and Rehabilitative Services; Jim Phillips and Kenneth Curtis, in their capacities as foster care fathers; Defendants.	) Cause No.) CV 90-69) BLG-JDS)))))))) ORDER) ENTERING) FINAL) JUDGMENT)))))))

Upon consideration of the Motion for Entry of Judgment and memorandum in support of that motion, filed jointly by the Defendants previously granted summary judgment in the above-entitled action, I hereby expressly find that there is not just reason for delay in entering final judgment in favor of those Defendants. All claims or grounds for liability against those Defendants granted summary judgment have been fully adjudicated. Importantly, Plaintiff has presented no issues which could withstand dismissal based upon this Court's holding concerning the running of the statute of limitations in the above-entitled action.

In addition, Defendants Pete W. Surdock, Norma Vestre and Jim Phillips have never been served. They are therefore not proper parties to consider for entry of final judgment is proper as to those Defendants previously granted summary judgment. U.S. v. Studivant, 529 16 F2 673, 674 (3rd Civ. 1976)

The only party which has been served and not dismissed is the Foster Care Review Committee, Thirteenth Judicial District. That party has not been defaulted by Plaintiff nor further prosecuted following service on that party on April 6, 1990. There is no indication in Plaintiffs status report to this Court dated June 21, 1991, that there is some reason why prosecution against the Foster Care Review Committee has not occurred. There is no indication in that status report that Plaintiff will now pursue the Foster Care Review Committee. It would be unjust to deny the movant's request for final judgment in light of Plaintiffs own failure to prosecute the Foster Care Review Committee. In addition, it would appear that this Court's ruling regarding the statute of limitations would apply equally to the Foster Care Review Committee.

Based upon those facts, this Court expressly finds that there is no just reason for delay and the entry of final judgment is appropriate for those defendants previously granted summary judgment.

Therefore, IT IS HEREBY ORDERED:

That the Clerk enter final judgment in the above-entitled action as to the following parties, pursuant to Rules 54(b) and 58, Fed.R.Civ.P.:

1. Casey Family Program, a Division of the Casey Foundation;
2. Kenneth Curtis;
3. The State of Montana, including the Department of Family Services, the Department of Social and Rehabilitative Services, Annabeth Felsman, Shirley Tiernan, Pat Cahill, Russ Francetich, Peggy O'Leary Smith, George Bulatowicz, and Warren Wright;
4. Damon Gannett;
5. Vincent Matule;
6. Mimi Morgan; and
7. Kenneth Curtis.

DATED this 15th day of November, 1991.

(Sig:) Jack D. Shanshrom
UNITED STATES DISTRICT COURT JUDGE

NOV 15 1991
UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA - Billings Division
JUDGMENT IN A CIVIL CASE

FRANK BORING FITZGERALD,
Plaintiff,
v.
MONTANA DEPARTMENT OF FAMILY SERVICES, et al,
Defendants.
CASE NUMBER: CV 90-69-BLG-JDS

X Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED
THAT FINAL JUDGMENT IS ENTERED IN FAVOR OF THE FOLLOWING DEFENDANTS PURSUANT TO RULES 54(b) AND 58, Federal Rules of Civil Proceedure:

1) Casey Family Program, a Division of the Casey Foundation;
2) Kenneth Curtis;
3) The State of Montana, including the Department of Family Services, the Department of Social and Rehabilitative Services, Annabeth Felsman, Shirley Tiernan, Pat Cahill, Russ Francetich, Peggy O'Leary Smith, George Bulatowicz, and Warren Wright;
4) Damon Gannett;
5) Vincent Natule;
6) Mimi Morgan.

Date: NOVEMBER 15, 1991
LOU ALEKSICH, JR, Clerk

COURT SEAL

By) (Sig): Sandra L. Studiner, Deputy Clerk

APPENDIX "C"

NOT FOR PUBLICATION FILED OCT 28 1993
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FRANK BORING FITZGERALD,	) No. 92-35001
Plaintiff-Appellant,	)
v.	) D.C. No. CV-90-69-JDS
MONTANA DEPARTMENT OF	)
FAMILY SERVICES, et al.,	) ORDER
Defendants-Appellees.	)

Before: BEEZER and HALL, Circuit Judges, and CONTI, District Judge.*

The panel has voted to deny the petition for rehearing, and Judges Beezer and Hall have voted to reject the suggestion for a rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35(b).

The petition for rehearing is **DENIED** and the suggestion for a rehearing en banc is **REJECTED**.

---

* Honorable Samuel Conti, Senior District Judge for the Northern District of California, sitting by designation.

APPENDIX "D"

JUDGMENT
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 92-35001
CT/AG#: CV-90-69-JDS

NOV 9 1993
MANDATE ISSUED
FILED '93 NOV 12 PM 3 17
LOU ALEKSICH, JR., CLERK
BY SANDRA L. STUDINER
DEPUTY CLERK [D.C.]

FRANK BORING FITZGERALD,
Plaintiff - Appellant

v.

MONTANA DEPARTMENT OF FAMILY SERVICES; ANNABETH FELSMAN; SHIRLEY TIERNAN; PAT CAHIL; RUSS FRANCETICH; WARREN WRIGHT, DFS Regional Administrator; DAMON L. GANNETT, Guardian Ad Litem; CASEY FAMILY PROGRAM, Division of the Casey Foundation; VINCENT MATULE; MIMI MORGAN; PEGGY SMITH O'LEARY; GEORGE BULATOWICZ; KENNETH CURTIS, in his capacity as foster care father
Defendants - Appellees

APPEAL FROM the United States District Court for the District of Montana (Billings).

THIS CAUSE came on to be heard on theTranscript of the Record from the United States District Court for the District of Montana (Billings) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is AFFIRMED.

Filed and entered August 30, 1993

A TRUE COPY ATTEST NOV - 9 1993
CATHY A. CATTERSON, Clerk of Court
by: (Sig): Juanja Ross, Deputy Clerk

APPENDIX "E"
THE CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED (In pertinent part)
US CONSTITUTION, 1ST, 4TH, 6TH, 9TH, 10TH, AND 14TH AMENDMENTS

AMENDMENT 1 Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT 4 The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT 6 In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtainting witnesses in his favor, and to have the Assistance of Counsel for his defence.

AMENDMENT 9 The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT 10 The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

AMENDMENT 14 Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

MCA 27-2-101, et seq. (in pertinent part)

CIVIL LIABILITY, REMEDIES, AND LIMITATIONS

CHAPTER 2

STATUTES OF LIMITATIONS

Part 1

General Provisions

27-2-101 Definition of action. The word "action", as used in this chapter, is to he construed, whenever it is necessary to do so, as including a special proceeding of a civil nature.

27-2-102. When action commenced. (1) For the purposes of statutes relating to the time within which an action must be commenced:

(a) a claim or cause of action accrues when all elements of the claim or cause exist or have occurred, the right to maintain an action on the claim or cause is complete, and a court or other agency is authorized to accept jurisdiction of the action;

(b) an action is commenced when the complaint is filed.

(2) Unless otherwise provided by statute, the period of limitation begins when the claim or cause of action accrues. Lack of knowledge of the claim or cause of action, or of its accrual, by the party to whom it has accrued does not postpone the beginning of the period of limitation.

(3) The period of limitation does not begin on any claim or cause of action for an injury to person or property until the facts constituting the claim have been discovered or, in the exercise of due diligence, should have been discovered by the injured party if:

(a) the facts constituting the claim are by their nature concealed or self-concealing; or

(b) before, during, or after the act causing the injury, the defendant has taken action which prevents the injured party from discovering the injury or its cause.

(4) Subsection (3) does not apply to actions involving the limitations contained in 27-2-205.

27-2-105. Periods of limitation. All civil actions must be commenced within the periods prescribed in part 2 except when another statute specifically provides a different limitation.

Part 2

Time Limits on Specific Kinds of Actions

27-2-201. Actions upon judgments. (1) Except as provided in subsection (3), the period prescribed for the commencement of an action upon a judgment or decree or any court of record of the United States or of any state with in the United States is within 10 years.

27-2-202. Actions based on contract or other obligation. (1) The period prescribed for the commencement of an action upon any contract, obligation, or liability founded upon an instrument in writing is within 8 years.

27-2-204. Tort actions - general and personal injury.

(1) Except as provided in 27-2-216, the period prescribed for the commencement of an action upon a liability not founded upon an instrument in writing is within 3 years.

27-2-216 Tort actions - chidhood sexual abuse.

(1) An action based on intentional conduct brought by a person for recovery of damages for injury suffered as a result of childhood sexual abuse must be commenced not later than:

(a) 3 years after the act of childhood sexual abuse that is alleged to have caused the injury; or

(b) 3 years after the plaintiff discovers or reasonably should have discovered the injury was caused by the act of childhood sexual abuse.

(2) It is not necessary for plaintiff to establish which act, in a series of acts of childhood sexual abuse, caused the injury that is the subject of the suit. The plaintiff may compute the period referred to in subsection (1)(a) from the date of the last act by the same perpetrator.

(3) As used in this section, "childhood sexual abuse": means any act committed against a plaintiff who was less than 18 years of age at the time the act occurred and that would have been a violation of 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, 45-5-625, or prior similar laws in effect at the time the act occurred.

USC 42-601, ET SEQ.

(In pertinent part as regards foster care)

625 Definitions:

(a)(1) For purposes of this title (42-601 et seq.), the term "child welfare services" means public social services which are directed toward the accomplishment of the following purposes:

(A) protecting and promoting the welfare of all children, including handicapped, homeless, dependent, or neglected children;

(B) preventing or remedying, or asisting in the solution of problems which may result in, the neglect, abuse, exploitation, or delinquency of children;

(C) preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems and preventing breakup of the family where the prevention of child removal is desirable or possible;

(D) restoring to their families children who have been removed, by the provision of services to the child and the families;

(E) placing children in suitable adoptive homes, in cases where restoration to the biological family is not possible or appropriate; and

(F) assuring adequate care of children away from their homes, in cases where the child cannot be returned home or cannot be placed for adoption.

675. Definitions: As used in this part (42-670, et seq.) or part B of this title (42-620, et seq.):

(1) The term "case plan" means a written document which includes at least the following: a description of the type of home or institution in which a child is to be placed, including a discussion of the appropriateness of the placement and how the agency which is responsible for the child plans to carry out the voluntary placement agreement entered into or judicial determination made with respect to the child in accordance with section 672(a)(1) of this title; and, a plan for assuring that the child receives proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate return of the child to his own home or the permanent placement of the child, and address the needs of the child while in foster-care,

including a discussion of the appropriateness of the services that have been provided to the child under the plan.

(2) The term "parents" means biological or adoptive parents or legal guardians, as determined by applicable state law.

(3) The term "adoption assistance agreement means a written agreement, binding on the parties to agreement, between the state agency, other relevant agencies, and the prospective adoptive parent of a minor child which at a minimum:

(A) specifies the amounts of the adoption assistance payment and any additional services and assistance which are to be provided as part of such agreement, and

(B) stipulates that the agreement shall remain in effect regardless of the state in which the adoptive parents are residents at any given time. The agreement shall contain provisions for the protection (under an interstate compact approved by the Secretary or otherwise) of the interests of the child in cases where the adoptive parents and child move to another state while the agreement is effective.

(4) The term "foster-care maintenance payments" means payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence.

(5) The term "case review system" means a procedure for assuring that:

(A) each child has a case plan designed to achieve placement in the least restrictive (most family like) setting available and in close proximity to the parents' home, consistent with the best interest and special needs of the child,

(B) the status of each child is reviewed periodically but no less frequently than once every 6 months by either a court or by adminstrative review (as defined in paragraph (6)) in order to determine the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extend of progress which has been made toward alleviating or

mitigating the causes necessitating placement in foster-care, and to project a likely date by which the child may be returned to the home or placed for adoption or legal guardianship, and

(C) with respect to each such child, procedural safeguards will be applied, among other things, to assure each child in foster-care under the supervision of the state of a dispositional hearing to be held, in a family or juvenile court or another court (including a tribal court) of competent jurisdiction, or by an administrative body appointed or approved by the court, no later than 18 months after the original placement (and periodically thereafter during the continuation of foster-care), which hearing shall determine the future status of the child (including, but not limited to, whether the child should be continued in foster-care for a specified period, should be placed for adoption, or should because of the child's circumstances be continued in foster-care on a permanent or long-term basis); and procedural safeguards shall also be applied with respect to parental rights pertaining to the removal of the child from the home of his parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents.

(6) The term "administrative review" means a review open to the participation of the parents of the child, conducted by a panel of appropriate persons at least one of whom is not responsible for the case management of, or the delivery of services to, either the child or the parents who are the subject of the review.

USC 42-1983

Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be jubjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injued in an action at law, suit in equity, or other proper proceeding for redress, For the purposes of this section, any Act of Congress applicalble exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

APPENDIX "F"

DEPARTMENT OF FAMILY SERVICES
STATE OF MONTANA, TED SCHWINDEN, GOVERNOR
406-444-3865 PO BOX 8005, HELENA, MONTANA 59604
February 25, 1988

Frank B. Fitzgerald
3000 Hallowell Lane
Billings, MT 59101
Dear Mr. Fitzgerald,

Please be advised that I interpreted your letter of January 28 to George Bulatowicz as a request for disclosure of our files on your daughter. I immediately contacted our Missoula office to prepare and copy the file relating to the incident involving Kenneth Curtis. I expect that information will be sent to you very shortly.

You need to know that we will release all information we generated that pertains specifically to your child. We are not authorized to release any psychological, medical or other reports that are generated by other professionals. If any of those exist, they must be acquired from the professional himself.

I hope handling your letter in this way satisfies your concerns. Sincerely, Sig: Randi M. Hood, Legal Counsel. TH3/j

DEPARTMENT OF FAMILY SERVICES
STATE OF MONTANA, TED SCHWINDEN, GOVERNOR
406-444-3865 PO BOX 8005, HELENA, MONTANA 59604
February 29, 1988

Ralph Herriott, Attorney at Law
315 N. 24th St. Billings, MT 59101
Dear Mr. Herriott:

Enclosed are copies of all materials produced by Department of Family Services regarding the Curtis/M.G.M. case.
Sincerely, Sig: Shirley V. Tiernan, Social Worker III. Arlene R. Grossman, Social Worker Supervisor II. SVT:hw. Enc.199

CURTIS PROGRESS SUMMARY AND SERVICE PLAN REVIEW Narrative for each Summary and Review Activity and Progress Summary: Recording date-------- Dates, events, persons

and resources involved, including problems encountered, and reasons.

12-22-87--Spoke to Arlene Grossman, Intervention Supervisor, regarding this case and how I should proceed. She suggested I speak to Russ Francetich.

Spoke to Russ Francetich at the District Office regarding the case. Russ stated that it would be up to Mimi to decide whether or not the child remained in the home. He will discuss case with Mimi.

Informed John Domitrovich at the District Office of this case.
Annebeth Felsman, S.W. III

12-29-87--Made report to City Police. AF

12-31-87--Spoke to Mimi Morgan. She stated that the decision to remove will be ours, not hers. She will provide extensive and intensive visitation to the family along with co-worker, Janet Finley. Mimi will also arrange counseling for M.G.M. with Joan Hess-Homeier and feels that she has a high level of trust between M.G.M. and herself. Ken Curtis saw Mike Scolatti on December 23rd, which was his first visit.

Called the City Police to see who is assigned to this case; spoke to Rusty Wickman. This is a county case--said to call Don Morman.

Sent referral to Don Morman, Missoula County Sheriff's Department. AF

01-04-88--Talked to Russ Francetich. Said he felt the decision to remove would be both Mimi's and mine. I said I like either the father to leave during this evaluation period or M.G.M. Russ stated he was concerned because the foster father, Ken, has been grooming M.G.M. and that he is high school teacher.

Spoke to Dr. Scolatti regarding Ken Curtis. He felt that M.G.M. would be safe in the home of Ken Curtis but fel tthat he should talk with M.G.M. and see how she feels since Ken still is an offender. He felt that his interview with Ken went well and that he was forthright.

01-06-88--Karen Emerson and I attempted to interview M.G.M. Curtis at Sentinel but she was uncomfortable and we asked her to come into the office. Karen E. and I interviewed M.G.M.Curtis at our office. This was taped at the request of Don Morman, Sheriff's Dept.

01-06-88--M.G.M. said she had an aversion to men and felt uncomfortable with them but didn't explain why. Said that Ken started to hug her only this year and it made her feel uncomfortable.

Said she wasn't especially close to either her mother, Marilyn or father, Ken, and that her mother was a distant person.

M.G.M. said the Curtis' were her second foster placement and that she had been to counseling before and she really liked Dr. Lear.

Karen Emerson and I attempted to interview M.G.M.Curtis at Sentinel High School, but she was uncomfortable and we asked her to come into the office.

Karen Emerson and I interviewed M.G.M.Curtis at our office. This interview was taped at the request of Don Morman of the County Sheriff's Dept.

Don Morman, Sheriff's Office said to tape the interview.

Interview M.G.M. at our DFS Office, 301 W. Alder with Karen Emerson, S.W. The interview was taped.

Earlier, Karen and I contacted M.G.M. at Sentinel High School but she did not want to be interviewed there.

M.G.M. stated that her father, Ken Curtis, reported the sexual assault to Mimi Morgan of Casey Family in December 1987 and said he reported as "fondling". The incident occurred the day after Thanksgiving, which would have been November 27, 1987. Her father, Ken, was to get her up at 10:00 AM and she woke up on her own at 10:08 AM. Her mother, Marilyn, had gone to work and her brother, Chad Curtis, was home on Christmas break from the U. of M. By the time Ken entered her room, M.G.M. stated that she was sitting up. She stated that she was wearing a pair of sweat pants, socks, tank top and a sweat shirt. Ken sat on her bed and began to talk about how he felt that M.G.M. was his "real" daughter and that an experience he had two years ago when M.G.M. fell asleep on his shoulder confirmed his feelings. M.G.M. said she was very tired and Ken put his arm around her and pulled her back on the bed with him and then she had her neck on his arm. Ken asked M.G.M. if he could ask her a personal question. Ken then placed his hand on her breasts (outside of clothing) and asked to see her breasts. M.G.M. became upset and told him to get out and he did. Later, when M.G.M. was putting her contacts on in the bathroom, Ken came to the door and kept apologizing for having asked her that question.

M.G.M. said she was upset and called her friend, Debbie, and told her what happened. She had also wanted to tell her school counselor, Ms. Bilyle, but she was not available. Her friend, Debbie, encouraged her to do something, but nothing ever came of it. A couple of weeks after the incident, M.G.M. said she wanted to use the telephone and was in the garage. Ken became very upset--said M.G.M. treated him like a lover and that he didn't want to get into a relationship--sexual--and that's not what he meant. About Dec. 19, M.G.M. was going to mall with her mother, Marilyn. M.G.M. told her that Ken sexually abused her. Initially, Marilyn did not believe her, then did. Marilyn went home and confronted Ken and he admitted. Ken later told Mimi and he said he was sorry and would go see Mike Scolatti.

Before the interview, M.G.M. was concerned about three things:

1) If her dad had to find out (Frank Fitzgerald),
2) what the police would do, and
3) foster care placement. Annabeth M. Felsman, S.W. III

TIME LINE

November 24, 1987--Ken Curtis has corrective nose surgery by Dr. Hickman.

November 27--Sexual assault occurs.

December 19--M.G.M. discusses sexual assault with Marilyn Curtis, foster mother.

December 21--Curtis family discuss sexual assault with Mimi Morgan of Casey Family.

December 23--Ken Curtis first appointment with Dr. Mike Scolatti.

December 24--Great Falls with Curtis family.

December 28, 1987 - Jan. 2, 1988--Billings with Frank Fitzgerald.

January 6, 1988--Interview of M.G.M. by Annabeth Felsman and Karen Emerson.

January 7, 1988--Tape given to Don Morman, Sheriff's Office.

January 12--Spoke to Mrs. Marilyn Curtis regarding options and her discussing these (M.G.M. placed out of home or Ken leaving) with Ken.

Mrs. Curtis felt that this was not a very big incident and felt that this happened because:

1) Ken had nose surgery on November 24 and the drugs hampered his judgment, and

2) the administrative changes in Casey and there not providing a worker until August 1987.

January 13--Call from Mimi Morgan. Said that the Curtis' decided that Ken would move from the family home. Said M.G.M. did not want to be contacted at school and what type of visitation would be approved. AF

01-11-88--Wendell Frogan, Sheriff's Department called to inform me that he has completed his investigation of the KenCurtis/M.G.M. case and it has been sent to the office of Dusty Deschamps. The objective is to keep him in treatment, not to prosecute. AF

01-11-88--Spoke to Randi Hood, State Attorney for DFS, 444-3865. I informed her that M.G.M. was in the temporary custody of the state until age 18 years, and wanted to know whether M.G.M.'s natural father, Frank Fitzgerald, had the right to know about the sexual abuse. Randi said yes and that Casey Family had the responsibility to inform Mr. Fitzgerald because they were managing the case. Annabeth Felsman, S.W. III

01-12-88--Spoke to Damon Gannett, attorney and Guardian ad litem for M.G.M. 245-6338. He feels that the removal of M.G.M. from Ken and Marilyn Curtis would be very difficult and his first choice would be to have Ken leave the family home and if this is not possible, then M.G.M. must leave. Also, he stated that the father, Frank Fitzgerald, has the right to know and someone would need to tell him.

Talked to Jan Watson, Receiving Home, 549-1072, in regard to M.G.M.. Mimi Morgan did contact her and Jan is willing to take M.G.M. on a trial basis.

Spoke to Marilyn Curtis: Told her there were two choices: 1) K en leaves the home, or

2) M.G.M. leaves. Off-hand, Marilyn said she would not allow her husband to leave. Marilyn felt this was a minor incident and due to two things:

1) lack of contact with Casey, and

2) drugs that Ken had taken prior to the incident. Apparently, on Tuesday, November 24, 1987, Ken had surgery on his nose and she feels this caused him to lack judgment and he was depressed. Dr. Hickman performed the surgery; Dr. Brinkley was the

anesthesiologist. Marilyn stated that Wendell Frogan thought this was important information.

Spoke to Mike Scolatti, 728-4100, in regard to Ken Curtis. Mike has seen him once and felt that his treatment would be shorter than most offenders--between six months and one year because he felt Ken had a handle on the dynamics. Mike said he would not put his neck out for Ken but felt that the two, Ken and M.G.M., could reside in the same homeas long as Ken was in group and M.G.M. in therapy. Mike feels though, that if someone had to leave, it should be Ken.

Called Receiving Home. Will remove tomorrow. AF

01-11-88--Meeting with Pat Cahill, Mimi Morgan, Russ Francetich and I met to discuss M.G.M. case. After discussion, Mimi felt that the foster mother, Marilyn Curtis did not have a good enough relationship with M.G.M. to be a foster parent by herself. However, our decision was to remove M.G.M. for her protection.

Mimi Morgan asked for another meeting with Russ Francetich, Pat Cahill and myself with her supervisor, Pete and co-worker, Janet. Pete felt that M.G.M. had rights and that she should remain in the home with the foster family. Also, if M.G.M. were to leave the home she would be at "risk" as she would feel that she was responsible for the break-up and that she would never report again and she would close herself off. There was lengthy discussion about intervention difference between a natural family and foster care family and the responsibility of a foster family. Casey Family felt that M.G.M. was not attached or trusting but felt secure with the Curtis family and that the Curtis family was uncomfortable with the lack of attachment. Although I did not attend all the meeting, DFS stood by their decision about removing M.G.M. Mimi Morgan also asked Pat if she could accompany me to the Curtis home 01-12-88 at 5:00 P.M. to talk with the Curtis family and explain the reasons for DFS decision.

Spoke to Damon Gannett, attorney and Guardian Ad Litem for M.G.M. He said that, again, he feels that the best possible solution would be to have Ken Curtis leave the family home, and if this is not possible, then M.G.M. must leave.

Annabeth Felsman, S.W. III

01-12-88--Talked with Pat Cahill and told her that I do not want to be put in a position of defending myself or position with the Curtis family and Mimi Morgan. Also, that I felt this case needed to move forward and that I wanted to talk directly to the Curtis family and move on. Pat Cahill called Mimi and informed her that I was going to move forward and speak to the Curtis'. Met. AF

01-18-88--Finally was able to speak with social worker, George Bulatowicz, 248-1691, of Yellowstone County, Billings.

Mr. Bulatowicz is the case manager of the M.G.M. case. He has had the case since 1985. Peggy Smith was previous worker.

The case file at Yellowstone consists of (4) large volumes. The case first came to light in April 1979. M.G.M. was seven (7) years old and termed "emotionally disturbed". Her mother was diagnosed as schizophrenic. She has a master's degree in education and worked as a social worker in New York.

Shortly after April 1979, the state asked that parental rights be terminated.

The named father, Frank Fitzgerald, contested. Apparently, the natural mother and he broke up before the mother knew she was pregnant. Frank took necessary blood tests and it was proven that he was M.G.M.'s father. The courts subsequently terminated natural mother's rights and father, Frank, took this to the Supreme Court regarding his termination and the lower court decision was overturned. In 1987, the state was given temporary custody of M.G.M. until she turns 18 years old. The father is considered as a schizophrenic in remission. He is extremely intelligent and brilliant. Frank is very articulate and has been a better attorney than the attorney(s) representing him. He continues to fight for M.G.M.

Records indicate that M.G.M. may have been sexually molested by her birth mother, although this has never been substantiated.

Yellowstone believes that M.G.M. has done well at the Curtis residence and she has been there nearly six years. In fact, M.G.M. uses the last name Curtis.

I asked for a short history of M.G.M. and names of previous therapist. Mr. Bulatowicz will try and get this together. He stated that he did know that M.G.M. had seen a Dr. Agusto in Billings but that there was no diagnosis but the evaluation was intended to

monitor visitation of M.G.M. with her father, Frank, in the summer of 1985.

I talked to Mr. Bulatowicz about the possibility of talking to Frank Fitzgerald about the sexual molestation of M.G.M. Mr. Bulatowicz agreed but asked for a letter regarding what happened, dates, etc.

Randi Hood, DFS Attorney (444-3865) called to talk about a conversation she was involved in with the Casey Family attorney regarding whose responsibility it is to inform Frank Fitzgeral, M.G.M.'s natural father, about the sexual assault incident at the Curtis home. Randi still believes that it is Casey's responsibility since they are the managers of the case. I told Randi it made no difference to me who told as long as it happened soon. I suggested that the Yellowstone County people were willing to have Frank Fitzgerald come into their office to discuss the matter since they knew and have a relationship with him. Randi said she'd get back to me. Annie Felsman, S.W. III

Mimi Morgan's Notes:

Attachment
Sexual abuse victim
Expectations
Change since Chad left
Decisions Tearfulness
M.G.M.--Tearfulness
Fear of going crazy
Separation--earlier
Joan Hess-Homeier--staffed case

01-19-88--Damon Gannett (long time with M.G.M.) GAL. Dad's rights not terminated because of dad's constant legal involvement. M.G.M. was moved to dad for 6 weeks one summer-- seen by psych there. She regressed while there, according to psych. Curtis' felt she was not herself for along time later. Shirley Tiernan, S.W. III

Mimi Morgan's Notes:

Ken: Anger
Displacement
Assuming victim stance

Marilyn: in the middle. No support outside of Ken, M.G.M., MZ. {MZ = Miriam Z. Morgan, Casey social worker, Casey Family Program. F.B.F. insert Dec 13, 1993.}

How to deal with Ken's anger? Confused at information from DFS. Michael Scolatti--unable to let M.G.M. be "child" role reversal again. Helpless.

M.G.M.: regressing?

blame

how to deal with Ken's anger?

power

suicide risk? helpless out of control trying to please no power Marilyn helpless also

Protection from Frank. Ken not move back in--court order--9-1-1.

01-19-88--Talked to Mike Scolatti. He said he was impressed with Ken Curtis and felt that treatment would be between 6 months to one year because he felt Ken understood the dynamics; however, Mike had seen only once. (Would be participating in group therapy.) Annabeth Felsman, S.W. III

01-20-88--Overall Impression: From the onset of this case, my supervisor, Pat Cahill, and her supervisor, Russ Francetich, were aware of all information and assisted in the decision-making process. Additionally, Regional Administrator, Warren Wright, was consulted.

As a CPS investigation, the duty of the worker is to protect. Worker took several factors into account as well as advice/input from others. In the end, it was decided that the Curtis family would:

1) Consider Ken's removal from the family home; or

2) M.G.M. would be removed and placed. Subsequently, the Curtis family took responsibility for Ken's actions and he left the family home.

Although I am skeptical about this arrangement because:

1) I do not know how committed the Curtis family is in resolving issues (i.e., minimalization of incident and bond of the Curtis' to M.G.M. and the strength of Marilyn/M.G.M. relationship given Ken's removal). Ultimately, M.G.M. maybe removed but I feel the

impact would be lessened if she were actively involved and had a relationship with a counselor/therapist.

Also, I feel it necessary that M.G.M. begin therapy immediately. That Ken continue to work with Mike Scolatti, Ph.D., and participate in group. And that M.G.M./Marilyn have counseling and that at some appropriate time all parties participate in family counseling.

My Concerns Regarding Protection

1) Ken Curtis did not voluntarily tell his wife about the sexual abuse incident of November 27, 1987.
2) There is evidence of "grooming" by Ken Curtis of M.G.M.during the past year (i.e. inappropriate hugging, etc.)
3) Ken Curtis has disclosed that he continues to have sexual feelings about M.G.M.
4) Ken Curtis' previous knowledge that M.G.M. was/is a troubled child.
5) Ken Curtis, having already sexually assaulted M.G.M., tells his wife that M.G.M. is withdrawing from him because she thinks he is going to sexually abuse her.
6) Curtis' family has essentially been without a worker until Mimi Morgan was assigned to the case, August 1987.
7) Mrs. Marilyn Curtis minimized the situation (what is expected) by saying this incident would not have happened if Ken would not have had corrective nose surgery and the medication effected his judgment.
8) The belief of both Ken and Marilyn that this incident could be the one to bring the family together.

Plus--After Ken Curtis was strongly encouraged by his wife to repeat incident to Mimi Morgan, Ken began counseling with Mike Scolatti shortly after.

Factors

1) M.G.M. has been at Curtis home since 10-17-81--six years. Needs therapy as soon as possible and all background info/history and her previous contacts with therapists will need to be provided.
2) M.G.M. has not been seeing an ongoing therapist for past/present problems.
3) M.G.M. frightened of natural father, Frank Fitzgerald, finding out about incident.

4) 01-13-88 Mimi Morgan states that M.G.M. "hears voices".
5) M.G.M. previous victim of sexual abuse (Yellowstone Co.)
6) M.G.M. "aversion to men" as she says.
7) Access of M.G.M. by Ken Curtis (business teacher)--both at school and at home (mother works).
8) Guardian Ad Litem, Attorney Damon Gannett of Billings, is adamant about either Ken Curtis leaving the home or M.G.M. being removed.
9) Case worker, George Bulatowicz (Billings), M.G.M.'s case manager, feels that M.G.M. must leave the home if Ken doesn't.
10) M.G.M.'s fear that she is crazy.
11) Issue that M.G.M. is not attached or trusting of the Curtis family, but feels secure. Annabeth M. Felsman, S.W. III

<u>01-21-88</u>

1) Who will do what with family?
2) How was decision made to remove M.G.M. or K.?
3) Releases of information--who?
4) Direction we're going Licensing

Casey will pay for M.G.M.'s and foster mom's (Marilyn) therapy.

Conflicting roles?

Casey continues to provide care, custody, control--M.G.M.& w/ K. and M. around M.G.M.

Ken--DFS responsibility to determine his contact with M.G.M.

Casey: biological father <u>does not</u> have right to be informed. Order <u>only</u> gives him visitation rights--arranged by Casey. "Strange order"

April 1979--SRS Billings removed; M.G.M. hadn't known this man as her father.

November 1980--his paternity established. Since 1980, he's been seeking to overturn order.

1985. M.G.M. six-week evaluation visit to father. DR recommended placement with Curtis.

Mother--psychotic

Father--psychotic--paranoia--did detective "work" on family. Stayed in car outside house. Father capable of doing anything to harass family.

M.G.M. had visit Christmas. M.G.M. has wanted visits--five days at a time--winter and summer (Frank and Velma). Brings back possessions of her mother's.

M.G.M. has positive relationship with her maternal aunt. Paternal grandmother ill now. SRS temporary custody until 18.

Agreement--placement continues with Casey.

Issue:

a) Should natural father be informed?
b) Who informs him? DFS

M.G.M. not anxious for father to know.

Casey looks at foster parents closer to biological parents--long term.

Casey wants M.G.M. to remain in family--with therapy--sees possible positive outcome.

Concerns:

rules, expectations--who's involved? Who has control over M.G.M.?

Scolatti--six to eight weeks before Ken coming home.

Licensing:

Provisional six month Marilyn is licensed. Not Ken--M.G.M. has say.

Visitation:

Can begin now--no overnights. Not alone together--M.G.M. and Ken. Ken spend night--without M.G.M. there. Need to be in writing. Contract--DFS--legal; case management. Casey and DFS are together:

1) Contract--treatment--service agreement Agencies/foster parents.
2) Releases
3) See Curtis family

Update report to court on this case--check with /Leslie /Randi.

Police Report on Curtis (check) Bob Reid--Brett Sells (City Police)

Tues. 26th--9 MZ's office

Tues. 26th--S--see Curtis family

Licensing:

Accountability: District Office S/ MZ--setdown rules--check with Scolatti re: Ken keeping treatment.

Releases:

Casey Family Program, Ken, Joan H-H, Scolatti, Damon Gannett Attorney at Law 720 No. 30th St. Billings, MT 59101 406-245-6338, Guardian Ad Litem. M.G.M. 2:20 P.M.

01-21-88--At CPS Team meeting, Mike Scolatti, Ph.D., disclosed that Ken Curtis began group sessions last night. Also, that he (Ken) felt that he acted out of anger towards M.G.M. because she was not close to him and that he has been spying/peeking at M.G.M. for some time.

Worker was concerned more so about the "violent" aspect of this act. Not approached as a "loving seduction" but out of violence. Rape is not for sexual gratification, but violence.

Annie M. Felsman, S.W. III

01-22-88--PCF George Bulatowicz. re: Annie F. George told Frank Fitzgerald. He said he talked with Leslie.

Smith and Co.--book

443-4730 Casey Family Program

2:30 P.C. to Casey related information to Pete and MZ. {Pete is Pete Surdock, Jr., Casey state director, MZ is Miriam Z. Morgan. F.B.F. insert December 14, 1993}

P.C. to George Bulatowicz 248-1691.

Shirley V. Tiernan, S.W. III

01-27-88--Defense mechanism have had chance to rebound. Wife convinced him is minor. 6-8 weeks (Mike) "needs to do penance" ST

02-05-88--Randi Hood--DFS Attorney. Received letter from Frank--asking to look at DFS files.

No professional records (no material done by anyone else). Only information relating to child--father has filed new letter to us, {US} Supreme Court. {insert added December 14, 1993, F.B.F.}

Address: Frank Fitzgerald
3000 Hallowell Lane
Billings, MT 59101. ST

02-08-88--M.G.M. displacing her anger at Ken on Frank. Fear feeding her anger--where is the (her) anger at Ken right now.

Has Marilyn felt her real anger toward Ken? The ethic doesn't allow anger. Forgiveness happens too soon.

M.C.--mixed feelings about Ken returning before some of above is resolved.

Marilyn very isolated. May see Joan in therapy. M.G.M. putting so much anger in statement and at DFS.
Shirley V. Tiernan, S.W. III

02-09-88--P.C. from Joan H.H. M.G.M. feels bad about Ken being out of the home. Joan wonders if Ken being punished, or if he's really dangerous to M.G.M.

From M.G.M.'s statements, Joan feels that M.G.M. doesn't consider Ken to be a threat to her. M. feels too much is being made of the incident.

02-18-88--Met with Marilyn Curtis and Mimi Morgan. Discussed Marilyn's feelings and responses regarding her family situation. She is planning to continue with Dr. Joan Hess-Homeier, who is also M.G.M.'s therapist. Marilyn stated that she believes this incident has helped to bring her, Ken and M.G.M. closer. They are much more able to talk about family problems. M.G.M. wrote a letter to Frank F., telling him how she feels. M.G.M. seems to like talking with Dr. Joan H-H. Shirley V. Tiernan, S.W. III

02-19-88--Received letter from Dr. Michael Scolatti stating that he feels it is safe for Ken Curtis to return to the home.

P.C. to Marilyn Curtis relaying information that Ken canreturn home. He will continue working with Scolatti until released by Scolatti. They will also continue to work with Mimi Morgan, Casey. SVT

02-22-88--P.C. from Ralph Herriott, Frank Fitzgerald's attorney. (406) 248-3138.

P.C. to Leslie Taylor. DFS gives F.F. only DFS product. She suggests we call Casey Family Program to see if they object to giving their dictation.

Re: Supreme Court. F.F. didn't file with Supreme Court for appeal. {false entry. F.B.F. filed in December 1987; was granted extention to April to file. F.B.F insert December 14, 1993}

P.C. to Ralph Herriott 315 N. 24th Billings, MT 59101. He asks that DFS send him a copy of the file. He will share with F. Fitzgerald.

P.C. to Casey Program. Requested they allow their recordings to be included in DFS file--permission was not give.
Shirley V. Tiernan, S.W III

{end of PROGRESS SUMMARY AND SERVICE PLAN REVIEW}

INTAKE REFERRAL

Case Name: Curtis, Ken & Marilyn
Investigation: Sexual Abuse
Case No: 32-36787
Date: 22 Dec 1987
Children: M.G.M. (foster child) Birthdate 06/10/72; Age: 15;
Sex: F
School: Sentinel--728-2403
Grade: Soph
Victim: checked
Address: 81 Lacota, Msla, Mt
Phone: Home 251-3326
Adults: Ken Curtis; Age: 41
Employment: Sentinel HS--Business teacher
Relationship: Foster father
Marilyn Curtis:
Employment: Dr. Hickman
Relationship: Foster mother

Nature of Referral:

M.G.M. has lived at the home of Ken & Marilyn Curtis since 10/17/81. The Casey Family is involved in the payment, support and supervision of the foster home. The state has licensed this home and M.G.M. is in the custody of DFS til age 18 yrs. This case comes from Yellowstone Co. and the Guardian ad litem is in Billings.

Mimi Morgan of Casey Family made a routine visit to the Curtis family on Dec. 21, 1987. At that time, Ken told her about an incident which occurred Nov. 28, 1987. Said he had gone into M.G.M.'s room to wake her up and fondled her breasts

M.G.M. told Mimi that Ken woke her up and he was touching her breasts, She told him to get out and he did.

Ken since has asked M.G.M.'s forgiveness and is willing to see someone. Ken is upset as M.G.M. is not distant from him.

M.G.M. disclosed to Mimi that she had been warned that Ken would molest her and he did. She is frightened and is withdrawn.

Ken states and acknowledges that he has sexual feelings about M.G.M.; M.G.M. has been a victim before and Ken knew it and Ken did not disclose to his wife. M.G.M. did on Dec. 19 while driving to the mall. Initially, Marilyn did not believe M.G.M., then said she did. Marilyn then confronted Ken.

Mimi believes that M.G.M. has a high degree of trust in her and Mimi feels that M.G.M. is a disturbed kid. M.G.M. is restricted, rigid, and cold. M.G.M.'s natural parents are mentally disturbed.

Although M.G.M. has been a victim of sexual abuse in the past, she has not seen a counselor. Casey Family was hesitant to bring the subject up since M.G.M. is fearful of being like her natural parents.

32-5 rev. 4/87

STATE OF MONTANA Department of Social and Rehabilitation Services Referral for Suspected Sexual Abuse. Date: 29 Dec. 1987
TO: Missoula County Sheriff's Office From: Annie Felsman, SW III, Referring CPS Worker, Phone Number 721-9360
Re: VICTIM M.G.M.
DOB: 6/10/72
Resides with: Ken & Marilyn Curtis Address: 81 Lacota, Msla, MT
Phone: 251-3326
ALLEGED OFFENDER: Ken Curtis
Relationship to victim: Foster father
Address: 81 Lacota, Msla, MT
Phone 251-3326
DOB: 10/15/46
REFERRANT TO CPS: Mimi Morgan, Social Worker w/ Casey Family Program
Address: 101 E. Broadway
Phone: 543-3632
Date of Referral 12/22/87
Dear Detective,

This case has not been investigated, yet, by our office. See attached memo. Victim, M.G.M. is at her natural father's home in Billings until Jan. 3, 1988.

MISSOULA COUNTY OFFICE OF HUMAN SERVICES
301 WEST ALDER, MISSOULA, MONTANA 59802
TO: City Police
SUBJECT: Sexual Abuse Referral
DATE: 12/29/87
MESSAGE

Mimi Morgan, Social Worker for the Casey Family Program informed me that Ken Curtis disclosed to her that he had fondled foster child, M.G.M. on November 28, 1987.

M.G.M. stated that Ken had entered her room to wake her up and began touching her breasts. She told Ken to get out and he did.

Other information--M.G.M. has been a foster child in the Curtis home since 1981; Ken acknowledges sexual feelings for M.G.M.; M.G.M. has been a victim of sexual abuse before being placed at the Curtis home; Ken did not tell his wife of this incident--(Dec 19) M.G.M. did; Ken has asked M.G.M.'s forgiveness and is opened to help. Signed By Annabeth Felsman, SW III

CSD-110A (Rev. 5/84)
State of Montana, Department of Soc. & Rehab. Services
REPORT ON CHILD PROTECT. SERV. REFERRAL

REFERRAL INFORMATION

1. Family Name: Curtis, Ken & Marilyn
2. K #: 32-36787
3. Street Address: 81 Lacota, Msla 59803
4. Relationship of Referral Source to
Client: 12.Human Services
5. Family Phone: 251-3326
6. County #: 4
7. Case Worker #: --
8. Referral Date: 12/22/87

CLIENT INFORMATION

10. SSN: --
11. Last Name: M.; First Name: M.
12. Birth Date: 6/10/72
13. Sex: F
14. Ethnicity Code: 1. Caucasian
15. AKA: --

CASE DETERMINATION

16. Complaint code: ABUSE: SA--Sexual
17. Children Involved: 1
18. Case Determination code: S--Substantiated
19. Perpetrator to Client Relationship Code: A--Parent
20. Investigation Start Date: 1/6/88
21. Investigation Completion Date: 1/6/88
22. Services Provided: (Circle all that apply)
B. Social Work Counseling
C. Resource Referral
G. Referral - Law Enforcement
I. Referral - County Attorney - Criminal
23. Current Case Status: (Circle one):
A. Case Open
24. Investigating Worker's Signature:
Annabeth M. Felsman
26. Date Submitted: 1/7/88

THIS INFORMATION IS CONFIDENTIAL AND IS USED BY THE COMMUNITY SERVICES DIVISION FOR ADMINISTRATION OF PROGRAM SERVICES ACCORDING TO POLICY SECTION CSD 104 OF THE DIVISION'S ADMINISTRATIVE MANUAL.

DEPARTMENT OF FAMILY SERVICES
STATE OF MONTANA, TED SCHWINDEN, GOVERNOR
406-721-9360
301 WEST ALDER MISSOULA, MONTANA 59802
JANUARY 13, 1988

Pat Cahill, S.W.S. II
DFS Office, Missoula County
301 W. Alder
Missoula, MT 59802

Dear Pat,

In regard to the care of minor child, M.G.M., a decision has yet to be made regarding the question of who is to inform the natural father, Frank Fitzgerald, of the sexual abuse of M.G.M. by foster father, Ken Curtis.

I spoke to the Department of Family Services attorney, Randi Hood, on January 11, 1988. It was her opinion that since the state had temporary custody of M.G.M. until aged 18, that the natural father, Frank Fitzgerald, had a right to know. Further, Randi felt that it was the responsibility of Casey Family to inform him since they manage this case.

The subject of telling Casey that they will need to discuss this with Mr. Fitzgerald has been skirted by Casey.

I believe, however, that since that decision of this case was the state's and that we do have custody, it should be our responsibility.

As a practical matter, a telephone call to Mr. Fitzgerald would be inappropriate. I suggest that the Billings' office handle this in their office as both supervisor and caseworker are familiar with this case and with Mr. Fitzgerald.

Please advise.

Sincerely, Signature: Annabeth M. Felsman, Social Worker III
Pat Cahill, Social Worker Supervisor II
AMF:hw

DEPARTMENT OF FAMILY SERVICES
STATE OF MONTANA, TED SCHWINDEN, GOVERNOR
406-721-9360
301 WEST ALDER MISSOULA, MONTANA 59802
JANUARY 13, 1988

Mr. Damon Gannett, Attorney At Law
720 No. 30th
Billings, MT 59101-0097

Dear Mr. Gannett:

Please be informed that Mr. Ken Curtis has decided to leave the family home.

Personally and professionally, I feel this is the most appropriate resolution as the Curtis family is taking responsibility and M.G.M. will be allowed to stay in the family home.

It is the hope of this agency to reunite this family and steps will be taken to monitor and manage the placement to that end.

Sincerely, Signature: Annabeth M. Felsman, Social Worker III
Pat Cahill, Social Worker Supervisor II
AMF:hw

DEPARTMENT OF FAMILY SERVICES
STATE OF MONTANA, TED SCHWINDEN, GOVERNOR
406-721-9360
301 WEST ALDER MISSOULA, MONTANA 59802
JANUARY 13, 1988

Mike Scolatti, Ph.D.
2831 Ft. Missoula Rd., Suite 305
Missoula, MT 59801

Dear Mike:

Please be informed that Ken Curtis and his wife, Marilyn, have decided that Ken will leave the family home.

I personally feel that this decision is in the best interest of the minor child, M.G.M. Curtis. Not only has the family taken responsibility but hopefully, M.G.M. will not feel the burden that it was her fault.

Measures will be taken to reunify this family under the same roof.

Sincerely, Signature: Annabeth M. Felsman, Social Worker III
Pat Cahill, Social Worker Supervisor II
AMF:hw

SERVICE TREATMENT AGREEMENT Department of Family Services and the Casey Family Program Agreement:

1. The agencies will maintain assessment and treatment of Ken and Marilyn Curtis and M.G.M. during the time DFS and the Casey Family Program are working cooperatively with the family.
2. The agencies will work together to determine how, when and if the family will be reunified.
3. The agencies will provide counseling and information to family members regarding interagency arrangements, communications and each member's treatment goals.

Family Agreement

1. Ken Curtis will be in therapy with Michael Scolatti, Ph.D. until Dr. Scolatti reports that treatment in his program is no longer necessary.
2. Ken Curtis will only have contact with M.G.M. supervised by Marilyn Curtis, DFS staff or the Casey Family Program staff.

3. Ken Curtis will remain out of the home overnight until recommended by DFS, Dr. Scolatti and Dr. Joan Hess-Homeier. Ken Curtis will be permitted to stay overnight in the home if M.G.M. is staying elsewhere overnight.
Signature: Shirley V. Tiernan, Representative Department of Family Services
Signature: Mimi Morgan, Representative The Casey Family Program. Date: 1-29-88
Signatures: Ken Curtis Marilyn Curtis M.G.M. (Curtis)
This agreement will be reviewed no later than February 29, 1988.

MICHAEL J. SCOLATTI, Ph.D.
COMMUNITY PHYSICIAN CENTER 2
2831 FORT MISSOULA ROAD, SUITE 305
MISSOULA, MT 59801
Telephone 728-4100, ext. 5445
February 15, 1988 received FEB 19, 1988

Shirley Tiernan, SRS
301 West Alder
Missoula, Montana 59802
Dear Ms. Tiernan:

This letter is in regards to Mr. Ken Curtis. As we discussed in our telephone conversation on 02-10-88, I do not feel that Mr. Curtis is a threat to his daughter, nor do I feel that he needs to be segregated from his family any longer.

If you have any additional questions please contact me at your convenience.
Sincerely, Signature: Michael J. Scolatti, Ph. D. Licensed Clinical Psychologist
MJS/sm

DEPARTMENT OF FAMILY SERVICES
STATE OF MONTANA, TED SCHWINDEN, GOVERNOR
406-721-9360
301 WEST ALDER MISSOULA, MONTANA 59802
FEBRUARY 19, 1988

Ms. Mimi Morgan, Casey Family Program
101 W. Broadway, Rm 401
Missoula, MT 59801

Re: Ken & Marilyn Curtis Foster Home

Dear Mimi,

In a letter dated February 15, 1988, Dr. Michael Scolatti states that he does not feel that Mr. Ken Curtis is a threat to his daughter, M.G.M. Curtis, and feels that Ken Curtis need not be segregated from his family. Because of this, I recommend that Ken Curtis return to the family home.

I have sent a copy of Dr. Scolatti's letter to Russ Francetich, SWS III. Mr. Francetich informs me that the Curtis license has been changed to a provisional license for Marilyn Curtis, only. This will be in effect until August 1988, when it will be reviewed by a licensing worker.

The DFS does request that Ken Curtis continue his participation in Dr. Scolatti's offender group until such time as Dr. Scolatti feels Mr. Curtis is ready to graduate. DFS also recommends that M.G.M. continue psychotherapy with Dr. Joan Hess-Homeier and that the Casey Family Program worker continue to work closely with this family.

Sincerely, Signature: Shirley v. Tiernan, Social Worker III
Arlene R. Grossman, Social Worker Supervisor II
SVT:hw
cc: Ken and Marilyn Curtis, 81 Lacota, Missoula, MT 59803
Damon Gannett, Attorney at Law
720 No. 30th
Billings, MT 59101

APPENDIX "G"

Phillips Notarized Statement
20 September 1987
To Whom It May Concern,

This statement concerns M.G.M., as known to me when we, Jim & Rhoda Phillips, became her foster parents, 10 April 1979 at 12 Riley Drive, Billings, Mt. 59101.

When M.G.M. first came to live with us, she related well to Rhonda, my daughter, & I, but it took her a couple of weeks to relate well with Jim. We contributed this to the fact that she had not had a male influence in her home. She missed her mother and Velma very much, and would talk about things they had done. She missed her 2 dogs & had many tales to tell of their fun. She also talked of her good friends Timmy, Rose & Bob. She was very expressive, & she had her own opinions in which she expressed freely. She also expressed herself through her drawings, poetry and by putting on little skits for us. She was a beautiful, sweet, unspoiled child, who loved people & enjoyed doing things with them & for them. She was very loyal & protective of her loved ones. She was a very brilliant child. When they tested her I.Q. in 1980, she test 2 or 3 years above her age.

Rhonda taught M.G.M. sign language, and on Mother's Day 1981, Rhonda played the piano, M.G.M. signed as they sang "The Rose". It was beautiful.

M.G.M. enjoyed helping prepare meals. Her specialty was tuna fish sandwiches. The first time she baked cookies, she was upset because they were eaten so quickly. I told her, she should be happy because if they weren't good no one would have eaten them. That made her happy. She always wanted to help fix meals. She would peel potatoes, not fast, but she'd get it done. She liked to clean, dust & vacuum. She'd say "Can I vacuum?", I'd say "If you want to. And although the vacuum was almost as big as she was, away she'd go.

She loved to clean & dust. She always make her bed & was neat & tidy with her personal things.

I loved her as my daughter & it was a deep hurt to me when they took her away the 17 October 1981. She is still deeply imbedded in my heart.

My husband, (ex husband now) Jim is an alcoholic. We had some very traumatic times.

After two of our little foster daughters were adopted at Christmas 1980, Jim seemed to get worse. He was very mean, verbally, sarcastic, & insinuative. He would make nasty remarks such as, "Which one are you going to Fu-- this time? " refering to Rhonda, my daughter, M.G.M., my foster daughter & Kevin, my foster son. These type of questions were made in the presence of the children many times.

He, Jim, mentally abused us all, but mostly me. I felt as long as he was harassing me, he was not bothering the children. I feel now that I was sicker than he was. I was depressed to the point of suicide. I hid in closets or any place where I could get away from him for just a short time. He would follow me everywhere, even to the bathroom, & talk, talk, talk. He was like a broken record. I would know what he was going to say before he'd say it. It seems my mind was in a constant turmoil. He had followed me around like this for days it seemed, I'm not sure how long, but not less than 3 days, maybe more. Home life was Hell, full of tention & fear. I was afraid to talk to the kids or they to me, because a simple thing such as "How many eggs do you want?", would set Jim off on one of his verbal tirades.

One day, while he was cleaning his shot gun at the kitchen table as I was doing dishes, he seemed more sobber than usual, I suggested he commit himself for treatment. Of course he said there was nothing wrong with him & he could quit drinking anytime he wanted to. I said that if he didn't commit himself then I would see if I could get him committed. He jumped up & stuck the gun against my stomache & said, "If you try I'll blow your guts out.", & pulled the trigger. It wasn't loaded, but it terrified me so much that I hit him along side the head with a fry pan I had in my hand. He looked surprised & said, "Why did you hit me?" in a voice of confusion. I told him why, but he wouldn't believe me. It was another talk all day, day. By the time the children arrived home from school, I was in my usual state of insanity. I was always glad to see them come home, because Rhonda could sometimes draw him away from me, but this day, no way. The only time he'd leave me alone was when he'd go out to the barn for another drink.

After our evening meal we went out to clean the yard & he just followed me around talking. I hated the sound of his voice. I just wanted to stop it any way I could. I told him to leave me alone for awhile. He'd say whats the matter with you. I tried to get away from him, but he'd just follow me every where. Rhonda & Kevin tried to get Jim to help them, he yelled at Kevin & shoved Rhonda, this was the first physical violent act I'd seen toward Kevin & toward myself but not toward Rhonda. When he shoved Rhonda & started talking to me again, I was so angry & full of hate I took the pushbroom I was sweeping the walk with & hit him on the shoulder & side of the face & head. It knocked him down, I ran into the house, grabbed the wall phone & was going to call the police to come & get Jim, I couldn't take any more. Jim came in, put his hand on the cradle-I hit him on the left cheek with the hand piece as hard as I could & ran upstairs. I started to dial the desk phone. He came up & pushed the button down. I beat his hand several times with the handpiece, he just smiled & said "What is the matter with you, are you crasy?" I guess I was. I ran to Kevins bedroom, got his 22 rifle, levered a shell into the chamber and stood in the door waiting. The kids-all 3-had come upstairs & were talking to Jim. Then the kids and Jim started toward me. I said, "If you come any closer I'll kill you." The kids stopped & said "Don't mom," they kept talking, but I didn't listen. Jim said "Go ahead, I don't care." I pulled the trigger, but I aimed it just above his head, I couldn't kill him after all. Kevin & Jim took the gun from me. Then crying I ran outside. It was dark by then, I hid in some bushes before they came out looking for me. I then smeaked away and went about 3 blocks to an AA helper, but he wouldn't help me. I returned home because I was afraid of what Jim might do to the kids.

I wasn't allowed to go anywhere alone. I had to take someone with me at all times.

Jim got a ranch job about 3 miles out of Fromberg. He promised he'd change. So we moved there in April 1981. While in the process of packing, Jim got angry with Rhonda, threw her on the floor & threatened to bash her face in. I hit him with a regular broom I was sweeping the floor with.

After we'd moved to Fromberg he became more physically & mentally abusive. One day M.G.M. had fallen in the gravel & some

of the gravel was imbedded in her knee. Rhonda was cleaning M.G.M.'s knee in the bathroom. Jim went in. He laughed at M.G.M., called her a bawl baby, because she was crying, then slapped her on the knee. Rhonda told Jim to leave M.G.M. alone & tried to push him out of the bathroom. M.G.M. ran out & took off running down the road crying. Kevin caug[illegible] up with her, we drove down, got her, returned to the house & I finished taking care of her knee. Then Jim became threatening & nasty. I told the kids quietly to go get in the car & to take a change of clothes. I kept Jim busy while they did this. Then I ran, jumped in the car & took off. We went to Fromberg with Jim following in his pickup. I tried to find the Sheriff, couldn't find him so we headed for Bridger, 16 miles away. Jim was trying to run into the back of us. He looked wild - his hair flying, laughing, even taking his hands off the steering wheel & wave them. We were going from 70 to 90 miles per hour. At one time I slowed for a curve, Jim drove up beside us & tried to push us off the road. I slammed on my brakes to keep him from hitting us. Then he wouldn't let us pass. We caught up with another car. We got past Jim & other car & let the other car follow us into Bridger, about 2 miles. Kevin got out & called the HPD. When the Highway Patrolman showed, we explained to him the situation. He stalled Jim & we four went to Red Lodge - letting loose all our fears, tentions & anxieties. Rhonda & M.G.M. had bad dreams about that for quite sometime.

There were so many things everyday until we, the children & I, on the pretense of going to an Alanon & Alateen meeting, were able to get away and go to my Folks in Jordan, Mt. With the help of Peggy Smith & Mary Honaker, Jim committed himself for treatment at Galen, Mt. The Drs. told me that they figured a large percentage of the time, Jim was doing these things he was in black out periods.

Jim never lived at our house again. He came for visits a few times. He came up drunk one night, began being abusive. I sent M.G.M. to the neighbors. Rhonda & Kevin kept out of his way. I called the police department. They locked him up in jail overnight. He never came back.

After Jim left for Galen, the kids & I moved to Bridger, Mt. 2 May 1981. In Conclution:

M.G.M. was a sweet and impressionable child. She would do anything to please those around her even if she did not always agree. She was loyal to those she lived with & loved ones. Even though she feared Jim she work her little heart out to please him or wait on him when he'd ask for a drink, bring me this or that. She was very loyal to Rhonda, Kevin & I. We were her family. If we felt sad, M.G.M. seemed to be the first to realize it & be there with a hug & a comforting word. M.G.M. had some good experiences and bad experiences while living with us. They could have had various effects on her as she grew older.

Notary Seal. (Sig) Rhoda Phillips

Subscribed & sworn this 21st day of Sept. 1987. N. Carol Watson, NOTARY PUBLIC for the State of Montana, Residing at Jordan, Montana. My Commission Expires Feb. 10, 1988. Rhoda Phillips, Box 96, Jordan, Mt. 59337 Phone 557-2393

APPENDIX "H"

M.G.M. note
(Written on a sheet from a small note pa[illegible])
(Written on or about June 12, 1990)
(Top of the sheet are the words in large pri[illegible])

1990 Big Sky
Handbell Festival

To Frank Fitzgerald

Something you always
used to say when
you left my house at
the Curtis's to them &
that I'd like to pass
on to you now. "See
you in court. See you
in court." From M_____ (M.G.M.)

Insty-Prints of Helena

APPENDIX "I"

IN THE DISTRICT COURT OF THE 13TH JUDICIAL DISTRICT OF THE STATE OF MONTANA IN AND FOR THE COUNTY OF YELLOWSTONE

IN THE MATTER OF	)	No. DJ-79-188, THE
	)	COURT'S FINDINGS OF
M.G.M.,	)	FACT, CONCLUSIONS
	)	OF LAW AND ORDER
Youth in Need of Care.	)	

This matter came before this Court on May 2 and 3, 1985, October 31, 1985, and February 6, 1986. Greg Mullowney, Deputy Yellowstone County Attorney, appeared for and on behalf of the Yellowstone County Resource Department of the Montana Department of Social and Rehabilitation Services. Court-appointed guardian ad litem, Damon L. Gannett, appeared on behalf of the above-named youth, M.G.M. Respondent Frank Fitzgerald appeared with his attorney Jeffrey T. Renz.

This matter was originally brought before this Court pursuant to the State's Petition to Terminate the Respondent's Parental Rights to the above-named youth.

Trial proceedings took place on May 2 and 3, 1985 and remaining testimony was scheduled for May 30, 1985. The parties informed the Court prior to May 30, 1985 that it had reached an agreement settling the case, and that the agreement was being reduced to writing. A written Stipulation was signed by all parties by July 26, 1985 and approved and ordered by this Court on August 13, 1985.

In September 1985 the Respondent filed a Petition to hold the State and guardian ad litem in contempt for violating the terms of the Stipulation and Order. After hearing testimony on October 31, 1985, this Court found that there had been insufficient evidence to hold either party in contempt.

On February 6, 1986, the parties stipulated into evidence the transcript of the October 31, 1985 hearing, and the Court heard other testimony.

The Court, having considered the previous record in this matter, as well as the evidence produced at all hearings before this particular Court, now makes the following:

FINDINGS OF FACT

1. The above-named child, M.G.M., was born out of wed-lock on June 10, 1972 in Yellowstone County, Montana, to J.M.

2. M.G.M. spent the first five years of her life with her natural mother, J.M., who suffered from chronic schizophrenia, undifferentiated type with paranoid ideation. J.M. was actively psychotic much of the time, heard voices, and had a difficult time caring for M.G.M., who was generally unclean and unkempt. M.G.M. may have been sexually abused while in J.M.'s care. M.G.M. was removed from J.M.'s care and placed in a foster care home in 1979. Because of J.M.'s demonstrated inability to relate to reality and the inability to relate to the community's concerns about M.G.M., her parental rights to M.G.M. were terminated on April 3, 1980. A copy of the Court's Memorandum, Conclusions, and Order in that proceeding is attached hereto and incorporated herein as EXHIBIT A, in order to provide information about M.G.M.'s background.

During the first five years of her life, M.G.M. failed to develop normally as a child, and exhibited some of the characteristics of schizophrenia. She failed to develop a self-identity, having adapted to a role reversal with her mother. The State and various professionals were of the opinion that there is statistically-established relationship between schizophrenia in parents and the development of schizophrenia in children, based upon genetic and environmental factors. Because of M.G.M.'s genetic background (J.M.'s schizophrenia) and the environment in which she lived for the first five years of her life, she was considered to be "at risk" to develop the mental illness of schizophrenia.

3. M.G.M.'s natural father was then determined to be the Respondent, Frank B. Fitzgerald. Frank had never been married to J.M., but lived next door to M.G.M. and J.M. for a period of time after M.G.M.'s birth. Frank's contact with M.G.M. was extremely limited by J.M., who did not tell M.G.M. that Frank was her father and she often expressed to M.G.M. her revulsion of him.

4. Frank receives a disability pension for a 1963 Veteran's Administration diagnosis of an undifferentiated schizophrenic reaction. Frank was diagonsed schizophrenic in 1980 by Ned Tranel, a duly-qualified clinical psychologist. Frank was also diagnosed as a schizotypal personality disorder by duly-qualified clinical psycholo-

gist. Without extensive counseling, psychologists expect their diagonses of Frank to remain unchanged. No evidence has been provided to show that this intervention has occurred or that Frank's mental condition has changed.

5. After the determination that Frank was M.G.M.'s father, efforts were made to arrange meetings between them. M.G.M. was in foster care prior to these meetings, and had been regularly receiving therapy from Mary Honaker, a licensed registered nurse and who has been certified since 1979 by the Montana Department of Institutions as a professional person under section 53-21-106, MCA. Two visits occurred after a year and a half of preparation, and resulted in a "smothering" of M.G.M. by Frank, with M.G.M. becoming frightened and upset and experiencing a weight loss. There was also concern at this time that Frank was unable to understand M.G.M.'s needs and respond appropriately.

6. The State terminated efforts at visitations between Frank and M.G.M., and moved to terminate his parental rights for the reason that placing M.G.M. in Frank's custody would significantly increase the risk that she would become mentally ill. The District Court terminated Frank's parental rights and she was subsequently placed in a foster home in Missoula, Montana, through the Casey Family Foundation, a private agency that provides specialized treatment-oriented foster homes for disturbed children. This particular foster home was chosen for M.G.M. because it is a close, loving, emotional family that provides the nurturance and acceptance that M.G.M. needs.

7. Frank successfully appealed the termination of his parental rights, and the judgment was reversed and remanded for further findings. See In the Matter of M.G.M., Youth in Need of Care (1982), 39 St. Rptr. 2191, 201 Mont. 400, 654 P2 994.

8. Pending retrial in this matter, M.G.M. continued to reside in foster care in Missoula, Montana, and occasionally had visits with Frank, and his new wife, Velma, who had been named as M.G.M.'s godmother by J.M. Vince Matule, Montana director of the Casey Family Program, testified that M.G.M. had a lack of emotional responses natural to children. He was concerned about Franks continued lack of understanding about M.G.M.'s needs and Frank's

poor judgment in sharing details of sexual abuse and psychological evaluations with her.

9. M.G.M. is described as being fragile, chameleon-like youth with a critical need at this particular phase of adolescence for nurturance, acceptance, and stable role-models.

10. Partway through the re-trial of this matter, the parties entered into a court approved Stipulation, attached here to and incorporated as EXHIBIT B. That Stipulation was designed to provide Frank with the opportunity to provide for M.G.M.'s parental care in his home for six weeks from June 24 until August 5, 1985. During that period of time, it was agreed that M.G.M. would meet with psychologist Richard Agosto once per week in order to monitor M.G.M.'s mental well-being. In the event Dr. Agosto found that M.G.M. had suffered or is at imminent risk of suffering an identifiable and substantial impairment of her intellectual or psychological functioning as a result of the acts or omissions of Frank Fitzgerald, it was agreed that she shall be placed with her foster family on a permanent basis and appropriate arrangements made for visitation between Frank and M.G.M..

11. M.G.M. resided in the Billings, Montana, home of Frank Fitzgerald for the six week period from June 24, 1985 to August 5, 1985. Dr. Agosto's August 2, 1985 written report of his evaluations of M.G.M. is attached hereto and incorporated herein as EXHIBIT C. His testimony at the October 31, 1985 hearing is on file herein, identified as EXHIBIT D. Dr. Agosto found at his initial screening that M.G.M.'s mental development showed increased reading ability and above average growth in vocabulary and general information skills for a 13 year old entering the 8th grade, but that her emotional and social development was typical of a 9 or 10 year old child. Dr. Agosto describes M.G.M. as a ".....very vulnerable young teenager who has not yet achieved a good level of stability and security." Her self-esteem was described as weak and could be easily disturbed to the point of regression. Dr. Agosto noted that during the period that M.G.M. resided in Frank's home she showed signs of increased stress and emotional presssure in the forms of sleep disruption, weight loss, feelings of helplessness, sadness, depression, and anger. Dr. Agosto wrote in his report:

"In conclusion, therefore, it is my impression that M.G.M. has suffered some identifiable impairment of her psychological functioning over the past few weeks. In addition, she is potentially at risk of greater levels of emotional stress and disruption should she be placed on a more permanent basis with the Fitzgeralds. In part, she has begun to show some diminished self-esteem and depressive anxious reactions due to some of the types of interaction that she has had with Frank and Velma. M.G.M. perceives them, and primarily Velma, as being very critical of her, not accepting M.G.M.s feelings and as to being helpful to her in developing any constructive ways of dealing with difficulties. She also feels that rather than being able to draw from her exposure to Frank and Velma models of effective adult and mature behavior that she has to be more of a leader and more decisive than they are. It appears that the Fitzgeralds have not been very effective in helping M.G.M. maintain a good level of self-esteem. In fact, their behavior has diminished some of her feelings of self-esteem and security by failing to realize some of her individual needs, reducing her self-respect, and not accepting her personal feelings as being real and failing to support their expression and existence.

12. After Dr. Agosto issued his findings, M.G.M. was returned to her foster family in Missoula, Montana, continues to attend school there, and is doing well in that placement and not requiring any counseling. Vince Matule, however, expects that she will require additional counseling in the future to deal with the stresses of adolescence.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over all matters, persons, and things involved herein and proper service of process in all matters in this action has been had on all persons involved and concerned herein.

2. M.G.M. is a youth in need of care within the meaning of section 41-3-102, MCA, for the reason that her normal mental health or welfare has been harmed by the acts and omissions of Respondent Frank B. Fitzgerald while she resided in his custody during the summer of 1985, and is threatened with further harm if placed in his custody on a permanent basis. This mental injury is impairment of her intellectual and psychological functioning.

3. Rather than proceeding to trial on the Petition to Terminate the Respondent's Parental Rights, the parties entered into a written Stipulation (EXHIBIT B) to provide for M.G.M.s custody. That Stipulation governs and binds all parties thereto as the resolution of this case.

4. It is in M.G.M.'s best interests that she be placed in the temporary care, custody, and control of the Montana Department of Social and Rehabilitation Services with the right to continue her placement with her current Casey Family Program foster family in Missoula, Montana, until she reaches the age of 18 years old, with the right to seek any necessary medical, dental, and psychological treatment for her and have access to that information and share it with the Casey Family Program.

5. Frank Fitzgerald shall be entitled to regular visitation with M.G.M., and plans for these visitations shall be arranged through the guardian ad litem, the Casey Family Program, and counsel for Frank Fitzgerald. That plan shall be reduced to writing and submitted to this Court for approval by September 30, 1986.

Dated this 2nd day of Sept, 1986.

(Signature) William J. Speare, District Judge

CERTIFICATE OF SERVICE Sept 4, 1986

APPENDIX "J"

IN THE DISTRICT COURT OF THE 13TH JUDICIAL DISTRICT OF THE STATE OF MONTANA IN AND FOR THE COUNTY OF YELLOWSTONE

IN THE MATTER OF) No. DJ-79-188 Exhibit B of
M.G.M.) STIPULATION Appendix "I"
Youth in Need of Care.) AND ORDER

COMES NOW Petitioner, the State of Montana, Respondent Frank B. Fitzgerald, and the Guardian Ad Litem, Damon L. Gannett, and stipulate as follows:

1. M.G.M. shall physically reside with Respondent at his residence in Billings, Montana, commencing on or about June 24, 1985, and continuing until August 5, 1985.

2. During this period, Respondent agrees that M.G.M. shall consult with a psychiatrist or a licensed psychologist. During the initial three (3) week period of M.G.M.'s residence with Respondent, M.G.M. shall attend a minimum of one (1) appointment per week with the selected psychiatrist or psychologist. If, in the opinion of the psychiatrist or psychologist that is selected to consult with M.G.M., more frequent appointments are warranted, the schedule of appointments as is prescribed by the psychiatrist or psychologist shall be followed by all parties hereto.

3. M.G.M. shall also be permitted to visit with Guardian Ad Litem during this period as frequently as is deemed necessary. A minimum of one (1) such visit per week shall occur.

4. Respondent further agrees to permit a Department of Social Rehabilitation Services social worker to visit his home once per week. Said visits shall be by appointment only. The Department shall provide all counsel with copies of all notes, reports, memos, and other documents prepared or generated as a result of such visits, on a weekly basis. Respondent shall be permitted to have any person of his choice monitor such visits. The purpose of these visits shall be to monitor M.G.M. and Respondent in terms of their mental and emotional wellbeing.

5. M.G.M. shall be permitted to telephone her present foster family as she wishes, except, however, Respondent may limit the frequency and duration of those calls when this cost exceeds fifty ($50) per month. M.G.M. may visit with her foster family on alternative

weekends unless a different frequency is recommended by the psychiatrist/pyschologist.

6. The selected psychiatrist/psychologist shall issue his/her report during the week of August 5, 1985. That report shall be made for the purpose of determining whether M.G.M. has suffered or will suffer identifiable (hand-written insert, no initials, the two words, 'and substantial') impairment of her intellectual or psychological functioning or whether she is at imminent risk of an identifiable and substantial impaiment of her intellectual or psychological functioning as a result of the acts or omissions of the Respondent.

In the event M.G.M. has suffered, or is threatened with the impairment described above, M.G.M. shall be immediately placed with the foster family on a permanent basis. The parties shall thereafter come to an agreement providing for visits between Respondent and M.G.M..

7. In the event the psychiatrist/psychologist does not conclude that M.G.M. has suffered or is threatened with the impairment described above, she shall remain with Respondent for the 1985-86 school year. At this time, the parties shall reevaluate the need and/or frequency of the visits and consultations set out in paragraphs 2, 3, 4, and 5 above.

8. At the end of the 1985-86 school year, the psychiatrist/psychologist shall issue a second report as described in paragraph 6 above. In the event this report reaches the conclusions set out in paragraph 6, M.G.M. shall be placed permanently with a foster family. The parties shall come to an agreement as to visitation.

9. In the event the psychiatrist/psychologist concludes that M.G.M. has not suffered and will not suffer an identifiable and substantial impairment of her intellectual and psychological func-tioning as a result of the acts or omissions of Repondent, all Peti-tions in this case shall be dismissed with prejudice.

10. In the event the psychiatrist/psychologist cannot conclude on or about June 15, 1986, that M.G.M. has suffered or is at imminent risk of suffering an identifiable and substantial impairment of her intellectual and psychological functioning as a result of the acts or omissions of Respondent, M.G.M. shall remain with Respondent and this case shall be reviewed by the psychiatrist/psychologist annually.

11. The parties agree that Dr. Richard Agosto and Dr. Marian Martin may conduct the evaluations called for in this stipulation. Said psychologist shall conduct an initial evaluation in June 1985, to provide "base line" data. Copies of all reports shall be provided to all counsel.

12. By this stipulation no party makes any admission regarding the present or future fitness or unfitness of Respondent as a prospective custodial parent. This stipulation represents the parties' temporary resolution of this case.

13. This stipulation does not limit the Petitioner's authority to intervene in or to provide services, including emergency protective services, to the Respondent and M.G.M. on such grounds as provided in Title 41, MCA.

14. M.G.M., if she so choosed, shall be allowed to visit the Curtis Foster Home from August 5, 1985, until August 19, 1985.

SUBSCRIBED to this 26th day of July, 1985.

STATE OF MONTANA, ex rel. Department of Social and Rehabilitation Services, Petitioner, (Sig) Mullowney, Deputy County Attorney. FRANK B. FITZGERALD, Respondent, (Sig) Fitzgerald. FRANK B. FITZGERALD, Respondent By (Sig) Renz, One of his attorneys. DAMON L. GANNETT, (Sig) Gannett, Guardian ad Litem. (Original done on stationery of the law firm of Olsen, Christensen & Gannett)

ORDER

Pursuant to the Stipulation of all parties hereto, which Stipulation has been presented to this Court, this Court does hereby enter the following:

1. IT IS HEREBY ORDERED that said stipulation is approved and that all parties hereto conduct themselves in accordance with the terms of that certain Stipulation dated the 26th day of July, 1985;

2. IT IS FURTHER HEREBY ORDERED that the hearing on the Petition which has been filed herein is continued and postponed until further Order of the Court.

DATED this 13th day of August, 1985.

(Sig) Holmstrom, District Judge
IN THE ABSENCE FROM CHAMBERS
OF JUDGE SPEARE OF DEPT. NO.4